

# **भारत का राजपत्र** **The Gazette of India**

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 No. 29] NEW DELHI, SATURDAY, JULY 20, 1968/ASADHA 29, 1890

इस भाग में अलग पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## नोटिस NOTICE

नीचे लिखे भारत के असाधारण राजपत्र ८ जुलाई, १९६८ तक प्रकाशित किये गये।

The undermentioned Gazettes of India Extraordinary were published up to the 8th July, 1968 :—

Issue No.	No. and Date	Issued by	Subject
232	S.O. 2329, dated 2nd July, 1968.	Ministry of Labour, Employment and Rehabilitation.	An Industrial dispute between the management of Chapui Khas Colliery, Post Office Kalipahari, District Burdwan and their Workmen represented by the Colliery Mazdoor Congress (HMS) Bengal Hotel, of each party.
233	S.O. 2430, dated 2nd July, 1968.	Ministry of Finance	Notifying the Public Provident Fund as a Provident Fund.
	S.O. 2431, dated 2nd July, 1968.	Ministry of Finance	Notifying the Public Provident Fund as a Provident Fund.
	S.O. 2432, dated 2nd July, 1968.	Ministry of Finance	Notifying the public Provident Fund as a Provident Fund.

Issue No.	No. and Date	Issued by	Subject
234	S.O. 2433, dated 3rd July, 1968.	Ministry of Railways	Appointment of Shri Sridhar Chandra Ray, District and Sessions Judge, Jalpaiguri and Darjeeling as Claims Commissioner.
	एस० ओ० 2434 दिनांक 3 जुलाई 1968 ।	रेल मंत्रालय	जलपाईगुड़ी और दार्जिलिंग क डिस्ट्रिक्ट एवं सेशनजज, श्री श्रीधर चन्द्र राय को दावा कमिश्नर नियुक्त करना ।
235	S.O. 2435, dated 6th July, 1968.	Ministry of Home Affairs.	Appointing the 10th day of July, 1968 as the date on which the Civil Defence Act, 1968 shall come into force in the whole of India.
236	S.O. 2436, dated 6th July, 1968.	Ministry of Commerce	Further amendments to the Exports (Control) Order, 1968.
	S.O. 2437, dated 6th July, 1968.	Ministry of Commerce	Further amendments to the Exports (Control) Order, 1968.
	S.O. 2438, dated 6th July, 1968.	Ministry of Commerce	Further amendments to the Exports (Control) Order, 1968.
237	S.O. 2439, dated 8th July, 1968.	Ministry of Labour, Employment and Rehabilitation.	Notifying for the information of the employers and the Workmen mentioned in Notification No. S. O. 2272, dated 20th June, 1968 that the persons making the said reference represented the majority of each party.
238	S.O. 2440, dated 8th July, 1968.	Ministry of Commerce.	Quality Control and preshipment inspection of Sodium Citrate.
239	S.O. 2441, dated 8th July, 1968.	Ministry of Information and Broadcasting.	Approval of the films as specified therein.

ऊपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जायेंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के अन्दर पहुँच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर)

केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 8th July 1968

S.O. 2546. In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 3rd May, 1968 by the High Court of Judicature at Patna in Election Petition No. 23 of 1967.

ELECTION PETITION NO. 23 OF 1967

In the matter of an application under sections 80 and 81 of the Representation of the People Act, 1951.

Thakur Jugal Kishore Sinha—Petitioner.

Versus

Shri Nagendra Prasad Yadav and others—Respondents.

For the petitioner: Messrs Pradyumna Narain Sinha, Yogendra Mishra, J. Krishna. Vasistha Nr. Choudhury, K. N. Keshav, Rama Ramani, M. Dayal, Sameshwar Dayal and Kumar Hari Narain Singh.

For the respondent No. 1: Messrs Kanhalya Pd. Verma and Kamla Kant Prasad.

PRESENT:

The Hon'ble Mr. Justice G. N. Prasad.

This is an election petition under sections 80 and 81 of the Representation of the People Act, 1951, hereinafter referred to as the 'Act', calling in question the election of Shri Nagendra Prasad Yadav (respondent No. 1) to the Lok Sabha held in February, 1967 from Sitamarhi Parliamentary Constituency No. 11, and seeking a further declaration that the petitioner has been duly elected from this constituency.

2. This Parliamentary constituency is comprised of six Assembly constituencies as follows:

- (i) Sitamarhi Assembly constituency No. 67,
- (ii) Bathana Assembly constituency No. 68,
- (iii) Sheohar Assembly constituency No. 70,
- (iv) Majorganj Assembly constituency No. 71,
- (v) Sonbarsa Assembly constituency No. 72 and
- (vi) Sursand Assembly constituency No. 73.

The dates of poll in the different Assembly constituencies were as follows:

Date of Poll	Name of Assembly constituency
17-2-1967	Sheohar
19-2-1967	Sursand and Sitamarhi
21-2-1967	Majorganj, Sonbarsa and Bathana

Besides, there was re-poll on 23-2-1967 at booth Nos. 16 and 43 of Bathanaha Assembly constituency.

3. The countings of ballot papers were held in Sitamarhi Court premises on three dates as follows:

Date of counting	Assembly constituency
23-2-1967	Sursand
24-2-1967	Sheohar
24-2-1967	Majorganj
25-2-1967	Sitamarhi
25-2-1967	Sonbarsa
25-2-1967	Bathanaha

On 26-2-1967, the postal ballots, which were four in number, were counted and on the same day the results of the election were declared by the Returning Officer, who was the District Magistrate of Muzaffarpur. It was announced that the different candidates had secured the following number of votes:

(i) Thakur Jugal Kishore Sinha (petitioner)	.. 1,40,820 votes
(ii) Shri Nagendra Prasad Yadav (respondent No. 1)	... 1,41,337 votes
(iii) Shri Jal Kishore Narain Singh (respondent No. 2)	... 34,004 votes
(iv) Shri Bhagwan Sao (respondent No. 3)	.. 31,469 votes
(v) Shri Satya Narain Prasad (respondent No. 4)	... 12,740 votes
(vi) Shri Satyanarain Sharma (respondent No. 5)	... 4,018 votes

Accordingly, respondent No. 1, who was found to have secured the majority of valid votes, was declared to have been elected.

4. Immediately, thereafter, the petitioner, who had lost the election by a margin of 517 votes, filed a petition (Ext. 2) before the Returning Officer for a re-count of the ballot papers on the ground that various types of irregularities and illegalities had been committed at the stage of counting of ballot papers, but the petition for re-count was rejected. The present election petition was, accordingly, filed in this Court on the 11th April, 1967.

5. The election petition contains 57 paragraphs, but it is necessary to refer to only two sets of averments contained therein. It is alleged, in the first place, that the counting of the ballot papers was not done in accordance with the provisions of the Act and the Conduct of the Election Rules, 1961, inasmuch as various kinds of irregularities and illegalities were committed in the counting of votes of each of the six Assembly constituencies. A large number of votes polled in favour of the petitioner were rejected and some votes polled in his favour were mixed up with the votes polled in favour of the other candidates, including respondents 1 and 2. The ballot boxes were neither brought on the counting tables, nor they were shown to the counting agents before being opened. Both Shri K. B. Saxena, the Assistant Returning Officer who had conducted the counting of the ballot papers of Sheohar, Sitamarhi and Bathanaha Assembly constituencies, and Shri S. Choudhary, who had conducted the counting of the ballot papers of the remaining three Assembly constituencies, were inimical to the petitioner, and as such they conducted the counting of votes in a manner prejudicial to the interest of the petitioner. The counting of Bathanaha ballot papers was continued beyond 8 P.M. without adequate lighting arrangement in the counting hall. At each counting table three persons used to scrutinise and count the ballot papers simultaneously, thereby making it impossible for the counting agents of the petitioner to examine whether the scrutiny and sorting of the ballot papers were being done properly or not. Several of the counting agents of the petitioner had raised protests and complaints about the irregular or illegal procedure of counting, but they were not heeded. Sometimes there were not exchange of words between the counting party and the Assistant Returning

Officers, on the one hand, and the counting agents, on the other, which the petitioner used to pacify by telling the counting agents that they should abide by the decision of the Assistant Returning Officers as the wrongs committed by them were liable to be rectified on inspection by the High Court. Nevertheless, the counting agents of the petitioner brought to the notice of the petitioner from their memories—as they were not allowed to take any notes in the name of secrecy of ballot papers—various types of irregularities and illegalities in the matter of counting of ballot papers of each of the six Assembly constituencies. As a result of such illegalities committed by the Assistant Returning Officers, more than 2000 valid votes cast in favour of the petitioner were rejected as invalid and more than 2000 votes cast in his favour and in favour of other candidates were fixed up with the votes of respondent no. 1. Certain test checks were held at the instance of the petitioner and mistakes were found to have been committed in sorting out the ballot papers which were corrected. The petitioner, accordingly, had “reasons to believe that if inspection and re-counting is ordered and if the improperly accepted votes are excluded and improperly rejected votes are included in the votes, of the petitioner, the respondent No. 1 will be found to have polled less as compared to the petitioner. Thus the election has been materially affected by the improper acceptance and rejection of votes by the persons concerned and hasty and unchecked counting (Paragraph 35). Regarding such irregularities and arbitrary action of the Assistant Returning Officers, the petitioner lodged complaint and prayed for recounting before the Assistant Returning Officer on 25-2-1967, but that was dismissed in the absence of the petitioner without hearing him. Thereupon the petitioner filed another petition for re-counting before the Returning Officer on 26-2-1967, but that was summarily rejected orally without giving any opportunity to the petitioner of being heard either personally or through his counsel. Allegations about these facts are contained in paragraphs 14, 15 and 17 to 39 of the election petition.

6. The second set of averments, which is relevant for the present purposes, is that contained in paragraph 51 of the election petition which reads:

“That respondent no. 1 published false statement maligning petitioner knowing it to be false even without the knowledge of the signatories. The leaflet in question was calculated to prejudice the prospects of the petitioner and related to his personal character. A true copy of the leaflet is enclosed and marked ‘X’ for identification. This was printed and published on behalf of respondent No. 1 at Sarvodaya Press Sitamarhi and was distributed by respondent No. 1 himself and through his agents. The details are given in schedule VI of this petition which forms part of this petition.”

7. Schedule VI is in the following terms:

“SCHEDULE VI.

*Details of corrupt practices adopted by respondent No. 1*—The respondent No. 1 got leaflets (A copy of the same enclosed below and marked ‘X’ for identification) printed at Sarvodaya Press, Sitamarhi making false allegation against Thakur Jugal Kishore Sinha and got them distributed in the constituency details of the same are given below:

Name of the distributors	Places of distribution	Date
1. Shri Nagendra Pd. Yadava (Respondent No. 1)	1. Sitamarhi 2. Majorganj	16-2-67 to 19-2-67 16-2-67 to 21-2-67
2. Shri Chandeshwar Yadava Village Chak Mahila, P.S. Sitamarhi	3. Barharwa	16-2-67 to 21-2-67
3. Shri Surendra Pd. Yadava Village Kharka P.S. Sitamarhi	4. Bairgania	” ”
4. Santokhi Rai, Village Parsa P.S. Majorganj	5. Akhta	” ”
5. Nagendra Rai Yadav		

No.	Name of the distributors	Places of distribution	Date
6.	Ram Narayan Rai Yadav	6. Sursand	16-2-67 to 19-2-67
7.	Adya Kumar all of village Ranjitpur P.S. Sitamarhi	7. Ranjitpur	" "
8.	Mahendra Rai Yadav Mukhiya of Khairwa Govind Pan- chayat, P.S. Sitamarhi	8. Piprahi (Sheohar)	16-2-67 to 17-2-67
9.	Yogendra Rai Yadav of village Panchhor P.S. Sitamarhi	9. Parihar	16-2-67 to 19-2-67
10.	Gudar Rai of Village Naniari P. S. Sitamarhi	10. Riga	16-2-67 to 21-2-67
11.	Yogendra Pd. Yadav of village Mohani P.S. Majorganj		16-2-67 to 19-2-67
12.	Head Clerk, C.D.C.M. Union Sitamarhi	11. Dumra	16-2-67 to 19-2-67
13.	Shri Ram Naresh Assistant Clerk both of Sitamarhi Cooperative Development Cane Marketing Union.		" "

8. The leaflet marked 'X' for identification is printed in Hindi, but an English translation thereof has been appended to the election petition, and it is in the following terms:

"Appeal to the voter—Brotheren of Sitamarhi Parliamentary constituency.

Brothers,

We want to draw the attention of you people to the incident of Basbitta Bazar. This incident took place at 2 P.M. on 14-2-1967. Thakur Jugal Kishore Sinha, after seeing his worsening condition, went out of temper and got the properties worth about one lac of the Traders of Basbitta Bazar looted through his Lathials (miscreants) and got the progagandists of Congress badly assaulted. Those people were in a mob of two thousand, armed with Lathis, Bhalas and two guns. As a result of this incident, Ijazul Mian, son of Rahiman Mian, of village Basbitta, is in a precarious condition and he is confined to death bed in the hospital. Besides this, Ramprasad Mahto's Mill was also got broken. This was worth Rs. 7,000/-. Those looters set fire in the sugarcane field of Shreo Rameshwar Mahato, resident of village Bhaluahia and threatened to set the village also on fire. All these matters are against the principle of democracy. Under democracy, every body has got the right of security of property and life. Therefore, we appeal to you gentlemen that for the safety of democracy, you should cast your every vote in favour of the Congress candidate, so that he becomes victorious and do not vote on the tree symbol of Thakur Jugal Kishore Sinha, who is an atrocious candidate (an incarnate of Ravan and Kansh).

Yours,

1. Mister Prasad Sah
2. Dharamdeo Pandey
3. Ram Surat Pandey
4. Khaleel Mian
5. Munif Mian
6. Sitaram Pandey
7. Jagarnath Mishra
8. Ramprasad Mahto
9. Bhada Sah
10. Bhagwan Das
11. Rajendra Das
12. Vishwambhar
13. Vishwanath Prasad

9. Out of the six respondents, only respondent No. 1 has appeared and entered contest. In a written statement extending over 67 paragraphs, he has denied each and every allegation made in the election petition. The allegation with respect to illegalities and irregularities in the counting of ballot papers have been denied in paragraphs 14 to 145 of the written statement. The allegation made in paragraph 51 of the election petition has been denied in paragraph 57 of the written statement in the following terms:

"That the allegation made in paragraph 51 of the Election Petition is not correct and is denied. The Respondent No. 1 never published any false statement against the petitioner. He never got the leaflet marked 'X' printed or published. The contents of marked 'X' does not indicate any fact relating to the personal character of the petitioner. It is not correct to say that the leaflet like 'X' was printed and published on behalf of the Respondent No. 1. Such leaflet was neither printed nor distributed by or on behalf of Respondent No. 1."

In paragraph 58, it has been stated;

"That the so-called detail given in schedule VI is wrong and is concocted. Respondent No. 1 or the person named in schedule VI never distributed the alleged leaflet at any place and on any date mentioned in that schedule."

10. A recriminatory petition has also been filed by respondent No. 1, and a written statement to the recriminatory petition has been filed by the petitioner. But it is not necessary to refer to these documents as the recriminatory petition has not been pressed at the trial.

11. At the instance of the parties, seven issues were framed on the 30th October, 1967, but issue Nos. 1, 2 and 6 were not pressed at the final hearing, and as such they need not be referred to. Issues Nos. 3, 4, 5 and 7 are in the following terms:

"3. Did respondent No. 1, his election agent and other agents, with his consent and connivance, commit corrupt practices of (i) undue influence, (ii) impersonation and (iii) false publication about the conduct of the petitioner knowing it to be false as alleged in the election petition? If so, has the election of respondent No. 1 been materially affected thereby?

4. Was there any improper and illegal reception and rejection of votes at the time of poll and counting in favour of respondent No. 1 and the petitioner as alleged in the election petition and the recriminatory petition? If so, was the result of the election materially affected thereby?

5. Did the Assistant Returning Officer and the Counting Officer adopt illegal method of counting and, thereby, a large number of valid votes cast in favour of the petitioner were rejected as invalid votes and a large number of votes cast in favour of the petitioner were mixed up with the votes of respondent No. 1 and other candidates? If so, has the result of the election of respondent No. 1 been materially affected thereby?

7. Is the election of respondent No. 1 void and is the petitioner entitled to be declared elected?

12. In issue No. 3, however, the question relating to commission of corrupt practices of (i) undue influence and (ii) impersonation was not pressed. Similarly, in issue No. 4, the question relating to improper and illegal reception and rejection of votes at the time of poll was not pressed. Therefore, substantially two questions fall to be determined in this case:

1. Whether the results of the election, in so far as it concerns the returned candidate, have been materially affected by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, and whether the petitioner has received the majority of valid votes; and,

2. Whether respondent No. 1 or any other person with his consent or any of his agents other than his election agent, acting in his interest,



committed a corrupt practice within the meaning of sub-section (4) of section 123 of the Act which reads:

- “(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.”

13. In support of his case on the first of these two questions, the petitioner has relied upon his own evidence (P.W. 29), supported by the evidence of 21 of his counting agents. He also brought on the record the petition (Ext. 3) which he had filed before the Assistant Returning Officer at Sitamarhi on the 25th February 1967. Out of the two petitions which he claims to have filed before the Returning Officer of Muzaffarpur on the 26th February, 1967, he has proved only one which has been marked Ext. 2. All the materials upon which the petitioner has relied in support of this part of his case have been dealt with in my order dated the 23rd of April, 1968, whereby I have rejected a petition presented before me by him to permit him to inspect the ballot papers with a view to enable him to bring the relevant ballot papers on the record as exhibits in support of his case. It is, therefore, unnecessary to make a fresh discussion of the evidence upon which the petitioner has relied for the purpose of proving that it is he, and not respondent No. 1, who has secured the majority of valid votes. I have referred in my said order to the terms in which the petitioner had filed Ext. 3 before the Assistant Returning Officer on 25th February, 1967. It will be noticed that even in paragraph 35 of the election petition, which I have quoted above, the petitioner has not been able to assert with confidence that he has, in fact, received the majority of valid votes. In my order dated 23rd April, 1968, I have shown that the petitioner's case on this point is contradictory, inasmuch as, on the one hand he has complained about denial of opportunity to his counting agents for noticing whether the scrutiny and sorting of ballot papers were being properly done or not, and on the other, he claims to have learnt from those very persons specific details of different categories of illegalities and irregularities in the matter of counting of ballot papers relating to a large number of specific booths, not one of which was mentioned by him in his petition for re-count on the 26th February, 1967. I am, therefore, of the opinion that for the reasons which I have already given, which I need not repeat at length here, the petitioner's case based upon illegalities and irregularities in the matter of counting of votes must fail.

14. Learned counsel for the petitioner, however, contended that even in the absence of the ballot papers on the record, the petitioner is entitled to succeed because his evidence makes out a *prima facie* case that the result of the election, so far as it concerns respondent No. 1, has been materially affected by reason of improper reception, refusal or rejection of a large number of votes or by the reception of void votes in his favour, and so the onus to disprove it has shifted upon respondent No. 1. In my opinion, the onus cannot shift in such a matter, particularly when the evidence which the petitioner has adduced on the point is not at all acceptable. It is for the petitioner to prove affirmatively that on such grounds, the result of the election has been materially affected, and this the petitioner has failed to prove. It was also contended that since the recriminatory petition, which has not been pressed, also contained similar allegations about irregularities and illegalities in the matter of counting of the ballot papers, the petitioner's case on the point must be accepted. I am unable to accede to this contention also. The recriminatory petition did not contain any admission of the petitioner's case about such illegalities or irregularities. It merely contained assertion of other irregularities and illegalities, that is to say, in regard to matters affecting the validity of the ballot papers counted in favour of the petitioner. It is not the petitioner's case that there were irregularities and illegalities in counting of the ballot papers in his favour also. I, therefore, hold that the petitioner is not entitled to a declaration either in terms of section 100(1)(d) or section 101 of the Act.

15. I now turn to the second branch of the petitioner's case, namely, that of commission of corrupt practice within the meaning of section 123(4) of the Act. As pointed out by their Lordships of the Supreme Court in *Kumara Nand v. Brij Mohan Lal Sharma* (A.I.R. 1967 Supreme Court 808), the petitioner has to prove the following facts; (i) that the offending leaflet (Material Ext. I) was



printed or published by or at the instance of respondent, (ii) that it contained some statement of fact, (iii) that the fact was false, (iv) that the respondent No. 1 believed it to be false or did not believe it to be true, (v) that the statement was in relation to the personal character or conduct of the petitioner, and (vi) that the statement was reasonably calculated to prejudice the prospects of the petitioner's election.

16. Therefore, the vital question which has to be decided is whether the petitioner has succeeded in proving that the offending leaflet was printed or published by respondent No. 1 or at his instance. To prove his case that it was printed at the instance of respondent No. 1, the petitioner has examined P.W. 21, who is a resident of village Mathwa, police station Sitamarhi. This witness has deposed to the following facts; (i) the offending leaflet was printed in the Sarvodaya Press at Sitamarhi, where he was in employment as a compositor from 26th January, 1965 to 29th March, 1967, (ii) pamphlets of respondent No. 1 were printed at that press on the occasion of the last general election, (iii) it was he who composed the offending pamphlet at 9 a.m. at the time of its printing, (iv) after composing it, he got 2000 copies of this pamphlet printed at that press, 1000 copies of blue paper and 1000 copies of yellow paper, (v) thereafter he personally delivered the printed matter to respondent No. 1 and Chandeshwar Babu on Wednesday, (vi) he had seen the original draft of the pamphlet, on the back of which something else was also written, (vii) the pamphlet Ext. 1 is one of the copies thus printed, (viii) the credit memo (Ext. 1) was filled in by the proprietor of the press, Shri Bishnu Prasad Khemka, and it bears his signature at two places. Commending the evidence of P.W. 21, learned counsel for the petitioner contended before me that it constitutes the best evidence which could possibly be given to prove the fact of printing of the offending pamphlet at the instance of respondent No. 1, being the evidence of an employee of the press who had not only seen the original draft, but had also composed the printing matter and had delivered it to respondent No. 1 himself. It seems to me, however, that it is difficult to accept the evidence which P.W. 21 has given. His claim that he was in employment of the Sarvodaya Press at the relevant time is open to grave doubt. When he was cited as a witness in the list of the witnesses filed by the petitioner in this Court on the 21st November, 1967, he was not described as an employee or ex-employee of the Sarvodaya Press. In Court he admitted that in his possession there was no paper which might show that he was in employment of that press. He claimed to be one of the seven permanent employees of the press, and even then he admitted that he could refer to no paper on the basis of which he could claim that he was an employee of that press. No records of the press have also been called for to substantiate this claim of P.W. 21. Secondly, in the election he was against the Congress party, of which party respondent No. 1 was the Parliamentary candidate. His evidence is that his sympathies in the election were with the candidate of the Jankranti Dal. He further admitted:

"I was not in favour of supporting the Congress candidate either for the Vidhan Sabha or for the Parliament. I was against the Congress in the election but in favour of the Jan Sangh."

Therefore, his evidence is not free from feelings of partisanship against the political party of respondent No. 1. Thirdly, the manner in which he deposed that the offending pamphlet had been printed at the Sarvodaya Press was highly suspicious. In his chief-examination he started by saying that in the last general election pamphlets were printed at his press on behalf of respondent No. 1 and among the papers so printed were ballot parchas. Then he said "I remember many other pamphlets which were printed at my press on that occasion at the instance of Nagendra Babu". After that a question was put to him in a leading form "Is it a fact that a pamphlet the heading of which was 'Sitamarhi Sansadiye Chhetra Ke voter Bhayion se appeal', was printed in your press at the instance of Nagendra Babu?", and this question was disallowed on the ground that it had been put in a leading form. The next question put to him was "Please tell me what kind of pamphlet you remember to have been printed in your press on behalf of Nagendra Babu?". Upon this the witness answered:

"Pamphlet containing the heading just stated in the last question of learned counsel for the petitioner." In other words, it was practically put in his mouth only to be repeated by him, that the offending pamphlet was printed at the Sarvodaya Press at the instance of respondent No. 1. A further question was put to him in his chief-examination

after he had seen Ext. I as to how he identified it to be one copy of the pamphlet printed at his press. Then he said:

"I say that this pamphlet was printed at Sarvodaya Press, Sitamarhi because the name of that press as well as its telephone number is printed at the foot of the pamphlet at page 66 of the election petition."

In other words, he was virtually asked to read out what is printed at the foot of Ext. I, clearly showing that he did not depose to all these matters from his personal knowledge. In view of his manner of deposing I find it difficult to accept his evidence that Ext. I was printed at Sarvodaya Press or that P.W. 21 had acted as its compositor. In his cross-examination P.W. 21 has admitted:

"Whatever paper is printed in Sarvodaya Press is noted on an Orderbook. The name of the customer is incorporated in the said Orderbook. The order of the customer is taken on the back of the manuscript tendered for printing."

If there were so many records available in the Press to support the petitioner's case that the offending pamphlet was printed there or at the instance of respondent No. 1, then it would have been very easy for the petitioner to show that the evidence of P.W. 21 was true, by calling the relevant records from the Press. But no attempt was made by the petitioner to call for any document from the Press in spite of the fact that in his evidence the petitioner (P.W. 20) has claimed that he had learnt on enquiry from the proprietor of the Sarvodaya Press that this pamphlet had been printed there on behalf of respondent No. 1. It should be mentioned here that towards the closing stage of the hearing of this case, the petitioner had filed a petition to call for certain documents hearing on this matter from the office of the District Magistrate, but even at that stage the petitioner made no effort to call for any of the records of the Sarvodaya Press in spite of the fact that P.W. 21 admitted that the proprietor of the Sarvodaya Press was alive and still looking after the press which was functioning and that "All order books, vouchers or manuscript and final printed pamphlets of all kinds are in his custody". P.W. 21 having admitted about the existence of the order books, vouchers and manuscript in the press, volunteered a statement that "When any illegal or objectionable pamphlet has to be printed, then the order of the customer is not taken on the back of the manuscript". Thereby P.W. 21 meant to convey to the Court that the alleged manuscript of the offending pamphlet did not contain the order of the alleged customer (respondent No. 1) since it was a case of printing an illegal or objectionable pamphlet. But this evidence of P.W. 21 was negatived by his very next statement wherein he said:

"It is only when the customer placing the order records his order on the back of the manuscript meant for printing that the name of the Press is printed on such objectionable printing matter."

Upon this evidence, the manuscript of Ext. I which contains the name of Sarvodaya Press would contain on its back the order for printing it placed by the alleged customer, namely, respondent No. 1. Therefore, had Ext. I really been printed at the Sarvodaya Press at the instance of respondent No. 1, then the best evidence would have been the alleged manuscript containing the order for printing recorded by respondent No. 1 on its back. P.W. 21 has admitted:

"The manuscript as well as the proof and the final copy of the printed matter are preserved in the Press."

In such circumstances, the total failure of the petitioner to call for the relevant documents from the Press strikes at the root of the contention of the learned counsel for the petitioner that P.W. 21 has given the best evidence about the printing of the offending pamphlet at the Sarvodaya Press at the instance of respondent No. 1.

17. There is another circumstance why I consider the evidence of P.W. 21 to be highly unreliable. Section 127A of the Act has imposed certain restrictions on the printing of election pamphlets posters, etc. Sub-sections (1) and (2) of section 127A read:

- (1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and

(ii) in any other case, to the district magistrate of the district in which it is printed.”

Therefore, if the name of the Sarvodaya Press was printed on Ext. I in accordance with sub-section (1) of section 127A, then it is reasonable to think that the provision of sub-section (2) would have been complied with and the necessary declaration and a copy of the printed document had been forwarded to the District Magistrate of Muzaffarpur, otherwise the Press would incur the punishment prescribed in sub-section (4) of section 127A which lays down:

“(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.”

But P.W. 21, claiming to have left the service of the Sarvodaya Press has not hesitated to charge the Press with the contravention of sub-section (2) of section 127A. He has said:

“It is not a fact that a copy of the manuscript and a copy of the final printed matter were to be forwarded to the District Magistrate in cases where the printing materials related to the election.”

He further said:

“Of no election petition, not even of the pamphlet marked ‘X’ for identification, either any copy of the manuscript or any copy of the final printed matter was ever sent from our press to the District Magistrate.”

The record shows that both the petitioner and respondent No. 1 had got a large number of election pamphlets, etc. printed at the Sarvodaya Press. In other words, both the petitioner and respondent No. 1 were its customers. It does not stand to reason that the Press had contravened the provisions of sub-sections (1) and (2) of section 127A at the instance of one of its customers to the prejudice of its another customer and simultaneously incurring the punishment provided in sub-section (4) of section 127A. Had P.W. 21 been a genuine employee of the Sarvodaya Press, he would not have attributed such contravention on the part of the Press. I should say one word here in support of my order rejecting the petition filed by the petitioner before me on the 10th April, 1968. Upon the evidence of P.W. 21, just referred to, no declaration or any other document contemplated by section 127A(2)(b)(ii) of the Act could possibly have been available in the office of the District Magistrate and, therefore, it was idle for the petitioner to make a prayer at a late stage of the trial for calling for such non-existing documents. However, in view of the unreliable character of evidence of P.W. 21, I am unable to rely upon his uncorroborated testimony that he was in employment of the Sarvodaya Press, that Ext. I was printed at that Press, that it was printed at the instance of respondent No. 1, that he had acted as a compositor in relation to it, that he had seen its original draft or that he had personally delivered it to respondent No. 1.

1B. The credit memo (Ext. 1) has been brought on the record with a view to support the petitioner's case that the offending pamphlet was printed at the instance of respondent No. 1. Reliance has been placed upon the third item of this credit memo for the purpose of proving that it related to the printing of 2,000 copies of the offending pamphlet Ext. I. P.W. 21 has, however, admitted that the credit memo. (Ext. 1) does not mention either the heading of the offending pamphlet or the colour or the size of the paper used for its printing. Merely on the basis of the credit memo (Exts. 1), therefore, I cannot accept the evidence of P.W. 21 that it had been filed in connection with the printing of the offending pamphlet. Three other credit memos of the Sarvodaya Press marked M, M/1

and M/2 for identification were shown to the witness, but he admitted that he did not remember the heading of any of the papers or notices mentioned in them. He further admitted "Of none of the orders in question connected with the credit vouchers marked 'M', 'M/1' and 'M/2' for identification, I can mention either the date of placing of order or the date of delivery, because these works are done by the proprietor". If he cannot mention the dates of order or delivery of these credit memos, it is inconceivable that he genuinely remembered the date of placing of order, or the date of delivery of the offending pamphlet. Similarly, if he cannot say the heading or the contents of any of the other papers mentioned in these credit vouchers, then he can never be trusted to say truly that a pamphlet bearing the heading or the contents of Ext. I was printed in the Sarvodaya Press. The fact that he is a tutored witness with respect to Ext. I is clear from his own admission:

"Except about the pamphlet marked 'X' for identification (at page 66 of the election petition) I cannot say the date of delivery of any printed matter from my press. Except the heading of this election pamphlet, I do not remember the heading of any other type of pamphlet amongst the thousand types of pamphlets which were printed at my press during my employment there."

I am, therefore, unable to believe that he had remembered that Ext. I was printed at his press at the instance of respondent No. 1 or that he had delivered it after printing to respondent No. 1 on 15th February, 1967. I am also unable to hold upon the basis of the unreliable evidence of P.W. 21 that item No. 3 of the entry in the credit memo (Ext. 1) relates to the printing of the offending pamphlet.

19. What item No. 3 of Ext. 1 relates to has been amply explained by respondent No. 1 (R.W. 6). He has deposed that item No. 3 of Ext. 1 is the cost of printing of an appeal in his personal name to the voters of his constituency and item No. 3 of another credit memo (Ext. C) is with respect to the price of paper used for printing the same appeal. The fact that item No. 3 of Ext. C is for the price of paper for his personal appeal is abundantly clear from the entry itself. Similarly, the fact that item No. 3 of Ext. 1 is the cost of printing of the same appeal is also clear from Ext. 1 itself, at the top of which it has been clearly mentioned that it is for printing charges only. The fact that the Press has invariably adopted the procedure of issuing separate vouchers for printing charges and for price of paper is apparent from several other similar credit memos (Exts. 5/1, 5/2, and M. M/1 and M/2 for identification) which have been brought on the record. It has been elicited from R.W. 6 in his cross-examination that he had got three kinds of appeals to voters printed at the Sarvodaya Press (i) one in his personal name covered by item No. 3 of Ext. 1 read with item No. 3 of Ext. C, (ii) the second in the joint names of himself and the Congress candidates of the Assembly constituencies comprised in this Parliamentary constituency covered by item No. 1 of Ext. 5/1, and (iii) the third an appeal issued to the voters on behalf of the Congress Committee covered by voucher No. 33 (of his election return) which has been marked Ext. 5/2. All these vouchers were attached by him with his election return. The wordings of the third item of Ext. C clearly show that it related to the first of these kinds of appeal. It was in respect of price of paper for printing an appeal in 2,000 copies in the personal name of respondent No. 1. The wordings of item No. 1 of Ext. 5/1 also amply show that it was for printing a joint appeal as described by R.W. 6. Likewise, the wordings of item No. 1 of Ext. 5/2 also amply support the evidence of R.W. 6 with respect to an appeal issued on behalf of the Congress Committee. If the item No. 3 of Ext. 1 would have related to the printing of a pamphlet like Ext. I, then respondent No. 1 would not have attached it to his election return. Therefore, I am fully convinced that item No. 3 of Exts. 1 and C respectively do not relate at all to the printing of a pamphlet in which the appeal appears to have been issued on behalf of persons other than respondent No. 1. Thus, Ext. 1 does not support the petitioner's case of the evidence of P.W. 21 that the offending pamphlet was printed at the instance of respondent No. 1. In my opinion, it has also not been proved that Ext. I was printed at Sarvodaya Press. P.W. 21 did not identify it as a paper printed there with reference to its type or the kind or colour of its paper.

20. Learned counsel for the petitioner, however, contended that the allegation made by him in paragraph 51 of the election petition that Ext. I was printed at Sarvodaya Press has not been denied by respondent No. 1 in his written statement and, therefore, onus lay upon him to disprove the petitioner's case on this point by adducing evidence of the men of the Press and of the signatories named in Ext. I. But I am unable to accept this contention as correct. The very first



sentence of paragraph 57 of the written statement contains a denial of all the allegations contained in paragraph 51 of the election petition. Therefore, no part of the onus of proof has shifted upon respondent No. 1. It is the petitioner (P.W. 29) who has claimed to have learnt from the proprietor of the Press that the offending pamphlet was printed there at the instance of respondent No. 1. Therefore, it was for him to establish his claim by examining the Press proprietor. If he had done that, then alone the onus to disprove this fact would have shifted upon respondent No. 1. He claims to have addressed a communication about it to the Election Commission and to have received a reply from there. But he has not chosen to bring them on the record. The addresses or other particulars about identity of none of the alleged signatories of Ext. I are to be found anywhere. Therefore, respondent No. 1 could have no means to trace out any of them as to examine them on his behalf. On the other hand, the petitioner (P.W. 29) has claimed to have had talks with 2 or 3 of them and to have learnt from them that they had not been consulted in connection with the publication of the offending pamphlet. Therefore, it was for him to examine them in support of his case or at least to mention the villages where they lived so that respondent No. 1 could contact them if they could be traced out. The petitioner is not entitled to succeed on the footing of shifting of the onus of proof upon respondent No. 1. Besides, I do not consider it safe to set upon the uncorroborated interested testimony of P.W. 29 on a matter like this. I, therefore, hold that the responsibility of respondent No. 1 for printing the offending pamphlet has not been established at all.

21. The next question which I propose to consider is, whether the offending pamphlet was published by or on behalf of respondent No. 1 by distributing its copies at the various places mentioned in schedule VI of the election petition. Eight witnesses have been examined by the petitioner in support of his case on this point. They are P.Ws. 1, 17, 19, 24 to 28. P.W. 1 has spoken about its distribution at Piprahi, Barharwa and Baigabia. P.Ws. 17 and 25 have spoken about its distribution at Parihar. P.Ws. 19, 24, 26, 27 and 28 have spoken about its distribution at Ranjtpur, Akhta, Riga Bazar, Majorganj and Sitamarhi bus stand respectively. No evidence has been adduced to prove its distribution at Sursand or at Dumra. No evidence has also been adduced about its distribution by Chandeshwar Yadav of Chak Mahila.

22. The witnesses on the point of distribution have been drawn from three different lists of witnesses which the petitioner has filed in this case. P.Ws. 1 and 17 belong to the 1st list of 57 witnesses which he filed on 21st November, 1967. P.W. 19 belongs to the 2nd list of 12 witnesses which he filed on 28th February, 1968; and P.Ws. 24 to 28 belong to the 3rd list of 14 witnesses which he filed on 8th April, 1968. The petitioner came out with the 3rd list after 22 out of his 29 witnesses had given their evidence. Persons who see any corrupt practice being committed before their own eyes are in the nature of eye-witnesses of a serious criminal offence, and if such persons are cited as witnesses at a late stage of the trial, then a serious doubt must arise that they are not genuine but got-up witnesses, unless, of course, it is explained that they could not have been cited earlier because, for example the person citing him or his *pairvikar* had no prior knowledge that those persons had seen the corrupt practice being committed. But there is no scope for any such explanation in this case. P.W. 28 has deposed that on the very day (18th February, 1967) on which he had seen respondent No. 1 personally distributing copies of the offending pamphlet, he had handed over one copy of it to the petitioner. The evidence of P.W. 27 is that he had also shown a copy of the pamphlet to Ram Naresh Singh (P.W. 1) who had gone to his village along with Jagarnath Choudhary. According to P.W. 26, he had talked about the offending pamphlet (with Jagarnath Choudhary who used to live in the *Dera* of the petitioner and had also shown a copy of that pamphlet to him. He has further deposed that after getting the offending pamphlet, he had met the petitioner for the first time 10 or 15 days after the election. Thereafter he had met him five or seven times more. These meetings with the petitioner he had at intervals of 15 days since after he had come across the pamphlet. During his first of such meetings with the petitioner, he had talks with him about this pamphlet. The petitioner has admitted that Ram Naresh Singh (P.W. 1) has been looking after this case on his behalf. Therefore, it cannot be said that these witnesses could not have been cited by the petitioner in his first or his second list on the ground that he or his *pairvikar* had no prior knowledge that they had seen the pamphlet being distributed by respondent No. 1 or others. Therefore, the very fact that these witnesses were not cited in the first list filed on 21st November, 1967, must lead to the distribution, but witnesses who have been set up at a late stage to depose to certain facts which they had not really seen. P.W. 25 was admittedly a polling agent of the petitioner at Sursand booth No. 12. If he had seen copies of the offending pamphlet being distributed on four consecutive days from 16th February, 1967, then it is impossible that he would not have informed the petitioner or his agent (P.W. 1) about it. In that case, he would have been cited as a witness on 21st November, 1967 itself. It seems to me, therefore, that all the witnesses

on the point of distribution of the offending pamphlet mentioned in the second and the third list of witnesses have been got-up to depose falsely in support of the petitioner's case. At any rate, it will be highly unsafe to hold upon their testimony that respondent No. 1 or anyone else on his behalf had distributed copies of the offending pamphlet at the different centres mentioned by them.

23. In order to prove that respondent No. 1 had personally distributed copies of the offending pamphlet at Sitamarhi, the petitioner has relied upon the evidence of P.W. 23, who has deposed that on 18th February, 1967 he had seen respondent No. 1 personally distributing such pamphlets at Sitamarhi Bus-stand. In support of his evidence he produced another copy of the offending pamphlet from his own pocket and has added that two other persons, Damodar Jha and Hari Kishore Singh, were in the company of respondent No. 1 on that occasion. I have already indicated that his evidence cannot be true because had he informed the petitioner about this fact on the same day, as he claims to have done, then the petitioner would not have waited to take appropriate action against respondent No. 1 until the filing of the present election petition in the off chance of losing the election to him. He would have immediately filed a criminal case against him for defamation because he says that on reading the pamphlet, he felt that it was an attack upon his personal character and that it was published intentionally to defame him. In cross-examination he has admitted that he knew that for such defamatory publication, the man responsible for printing and publishing it was liable to criminal prosecution, but admittedly he did not lodge an information in this connection against anyone in any police station. Therefore, it is not possible to accept the evidence of P.W. 23. Besides, he was never called upon to produce any document in this Court. He has said that no paper was sent to him from this Court asking him to produce any pamphlet or paper. Therefore, by his action in producing a copy of the offending pamphlet in this Court out of his own accord, he has demonstrated his undue anxiety to support the petitioner. He has further admitted that in the election his sympathies were with the Jan Karanti Dal which was contesting the election against the Congress Party. I am, therefore, unable to rely upon his evidence about commission of such corrupt practice by respondent No. 1 personally.

24. For proving his case that respondent No. 1 personally had distributed such pamphlet at Majorganj, the petitioner has relied upon the evidence of P.W. 27. His evidence to the effect that he had shown a copy of the offending pamphlet to P.W. 1 finds no support from the evidence of P.W. 1. Jagarnath Choudhary who used to live in the Dera of the petitioner and to whom also he claims to have shown the pamphlet, has not been examined to support his evidence. Neither P.W. 1 nor P.W. 27 had made any report to any public authority about the conduct of respondent No. 1 in personally distributing such pamphlet by way of false propaganda against the petitioner. Neither P.W. 29 nor P.W. 1 has said that either P.W. 27 or P.W. 28 had ever informed him that respondent No. 1 had personally distributed such pamphlets at Majorganj or Sitamarhi. I, therefore, hold that the petitioner has failed to prove his case in schedule VI against respondent No. 1 personally.

25. P.W. 26 has deposed that he had got a copy of the offending pamphlet at Riga Bazar where it was being distributed on 21st February, 1967, by Gudar Rai of village Manlari and Jogendar Rai of village Mahani, besides two or four other persons. But in schedule VI, Jagendar Rai of Mahani has not been shown as a distributor of this pamphlet at Riga. Therefore, his evidence to this extent cannot be accepted. Even against Gudar Rai of Manlari, I am unable to accept his evidence because I have already indicated that he could not have seen any such corrupt practice being committed, otherwise his name would have been found place in the very first list of witnesses of the petitioner. His dislike for the Congress Party, of which respondent No. 1 was the candidate, is apparent from his own evidence because he has said that he developed a dislike for that party since the time the leadership of that party went into the hands of Sri K. B. Sahay two or four years back. At present his sympathies are with the S.S.P., the party of the petitioner. Therefore, P.W. 26 is clearly a partisan witness. No reliance can, therefore, be placed upon his evidence for the reasons given above.

26. P.W. 25 has deposed about distribution of copies of such pamphlets being done by a band of workers headed by Jogendra Yadav in Parihar. His evidence is that seeing pamphlets of this type being distributed, he entertained a feeling of anger in his mind and felt that they were being distributed to ruin the prospects of the petitioner's election. I have already said that he was a polling agent of the petitioner at Parihar booth No. 12 in Sursand constituency. Therefore, if



he had really seen such pamphlets being distributed for four consecutive days between 16th February, 1967, and 19th February, 1967, then he was bound to take appropriate action, but he has admitted:

"Regarding the act of Jogendra Yadav in distributing the defamatory pamphlets against Thakur Saheb I did not think it necessary to make any report to any election authority. I did not forward any copy of that pamphlet to any election officer or any police officer."

It is manifest that there is no truth in his version about the distribution of such pamphlets by Jogendra Yadav at Parihar. The evidence of P.W. 24 is that on 18th February, 1967, he had been seen Santokhi Rai distributing such pamphlets at Akhta, which is his residential village, and he handed over a copy of that pamphlet to Ragho Bajpai of his village. In cross-examination he admitted that except to Ragho Bajpai, he had spoken to none about the fact that Santokhi Rai had distributed such objectionable pamphlets amongst the voters on behalf of the Congress Party. But the only person who was expected to corroborate his evidence has not been examined by the petitioner. This Ragho Bajpai could not have been a complete stranger to the petitioner because according to P.W. 24, it was Ragho Bajpai who had told him that summons had been received from this Court for his evidence in this case. Ragho Bajpai could not have known it unless he had been a worker or a *karpardaz* of the petitioner. Therefore, the uncorroborated testimony of P.W. 24, who has been cited as a witness at a late stage of the trial, cannot justify a finding in favour of the petitioner about distribution of copies of the offending pamphlet at Akhta by Santokhi Rai.

27. To prove the case set up by him in schedule VI of the election petition about distribution of such pamphlets by Adya Kuar of Ranjitpur, the petitioner has relied upon the evidence of P.W. 19. According to this witness, the distribution by Adya Kuar was made on 17th February, 1967, in Ranjitpur. Admittedly, he was a worker of the petitioner in the election and he claims to have seen 200 to 400 copies of the offending pamphlet during the canvassing period, and yet he has admitted:

"Seeing such objectionable pamphlets being distributed I did not consider it necessary to lodge any information about it anywhere. I did not forward a copy of this pamphlet to any authority with any petition for action."

Such utter inaction on the part of a worker of the petitioner in the election can only be explained upon the basis that he had never seen such pamphlets being distributed by anybody at Ranjitpur. I, therefore, reject his evidence as unacceptable. Thus the evidence of none of the witnesses cited in the second or the third lists, namely, P.Ws. 19 and 24 to 28 is fit to be relied upon.

28. I now come to the witnesses on the point of distribution cited from the first list of the 21st November, 1967. The most important witness of this list is P.W. 1, and he has deposed about distribution of copies of the offending pamphlet at three different centres Barharwa, Baigania and Piprahi (Sheohar). In his examination-in-chief he said that he had seen such leaflets being distributed amongst the voters on behalf of respondent No. 1 by Surendra Prasad Yadav, Yogendra Prasad, Ram Narain Rai Yadav, and two clerks of Sitamarhi Cane Growers Cooperative Union at two or three places, namely, Piprahi, Barharwa and Baigania. But his evidence is not consistent with the case set up by the petitioner in schedule VI, according to which such distribution is supposed to have been made at Barharwa by Chandeshwar Yadav of Chak Mahila whom P.W. 1 has not named. According to schedule VI, neither the head clerk nor Ram Naresh, the Assistant clerk of the Cane Marketing Union, had distributed such pamphlets at Piprahi, Barharwa or Baigania. According to schedule VI, Yogendra Prasad had not distributed such pamphlets at any of the three places mentioned by P.W. 1. and Ram Narain Yadav is alleged to have distributed such pamphlets at Sursand, not at Piprahi, Barharwa and Baigania. It is also not the petitioner's case in the election petition that Surendra Prasad Yadav, Yogendra Prasad, Ram Narain Rai Yadav and Mahendra Rai Yadav had jointly distributed such pamphlets at Barharwa, Baigania and Piprahi. Evidently, P.W. 1 has lumped up these names for the purpose of proving the alleged distribution at three different places since he could not remember the particulars mentioned in schedule VI. He has also not mentioned the dates of the alleged distribution by these alleged distributors. There is nothing to corroborate his testimony on this point. Neither he says that he had disclosed the names of the alleged distributors to the petitioner nor P.W. 29 says that he had told their names to him. He is undoubtedly a very highly interested witness because P.W. 29 has

admitted that he has been looking after his case on his behalf. He had also acted as a counting agent of the petitioner, and yet as admitted by him, he had made no report relating to this defamatory pamphlet to any Governmental authority, although he admits that he did realise that the persons distributing them were doing an illegal act. In such circumstances it will be highly unsafe to rely upon his evidence.

29. The only other witness on the point of distribution of the offending pamphlet is P.W. 17 who had acted for the petitioner both as a polling agent and as a counting agent. He has deposed that on 18th February, 1967, he had seen Yogendra Rai Yadav of Panchore distributing such offending pamphlets in Parihar Bazar. He has admitted that Parihar is at a distance of 12 or 13 miles from his village by road and it lies within Bela police station within Sursand Assembly constituency, while his village lies within Majorganj police station and Assembly constituency. He has further admitted that Panchore is about 25 miles from Parihar and lies within Bathnaha or Sitamarhi Assembly constituency. Therefore, it is highly improbable that P.W. 17 could have seen Jogendra Rai Yadav of Panchore distributing such pamphlets so far away from his village, and the fact that he had not really seen any such thing at Parihar is evident from his own admission that in spite of being an active worker of the petitioner and realising that the distribution of such a pamphlet about a candidate was improper, he made no report before any public authority about the distribution of such a pamphlet mentioning the name of any person who had distributed it. I cannot, therefore, persuade myself to accept the evidence of P.W. 17. The very fact that P.W. 29 took no action in connection with this pamphlet at any time before the filing of the present election petition, shows that none of his workers had really seen it being distributed anywhere.

30. Respondent No. 1 has admitted that amongst the names mentioned in schedule VI, only two, namely, Surendra Prasad Yadav and Ram Naresh Prasad, the Assistant clerk of the Cane Marketing Union, were his workers. As to the rest, he has denied on oath that they were his workers in the election, and his denial to this effect has not been falsified with reference to any document on the record. Surendra Prasad Yadav (R.W. 7) has denied on oath that he had distributed such pamphlets at Piprahi, Barharwa and Baigania. Even without his denial it has not been proved that he had distributed such pamphlets at any of the places mentioned by P.W. 1. There is also total lack of evidence on the side of the petitioner that any of his agents had distributed such pamphlets with the knowledge or consent of respondent No. 1. The fact that not a single copy of this pamphlet was filed before any public authority at any time until the conclusion of the election, leads to the inference that it was not in existence until long after the election was over. For the various reasons given above, I have come to the conclusion that the petitioner has failed to prove that the offending pamphlet was publicised by or on behalf of respondent No. 1 by distributing its copies at any of the centres mentioned in schedule VI of the election petition.

31. Upon the findings recorded above, no further question in connection with the alleged commission of the corrupt practice defined in section 123(4) of the Act arises. Since, however, arguments both for and against have been addressed to me about the remaining ingredients of the alleged corrupt practice, it is desirable that I should briefly indicate my views about them. It is contended on behalf of the petitioner that upon the evidence of the petitioner (P.W.29) himself, it must be held that all the remaining ingredients of a corrupt practice under section 123(4) of the Act have been established because the evidence of P.W.29 to the effect that the statements of fact contained therein are false has not been rebutted by any evidence on the side of respondent No. 1. In support of this contention learned counsel has relied upon *Kumara Nand v. Brijmohan Lal Sharma* (A.I.R. 1967 Supreme Court 808), to which I have already referred. Therein, it was held that though the onus to prove the various ingredients of the corrupt practice is on the election petitioner, the main things that he has to prove are that such a publication was made of a statement of fact and that that statement is false and is with respect to the personal character or conduct of the election petitioner. There it was further held that the burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true, which rests upon the complaining candidate, is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter, it would be for the candidate publishing the statement to prove otherwise. There, it was further held that the question whether the statement was reasonably calculated to prejudice the prospects of the election of the complaining candidate would generally be a matter of inference. So the main onus on an election petitioner under section 123(4) is to show that a statement of fact was published by

a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. Once that is proved and the complaining candidate has sworn as above indicated, the burden shifts to the candidate making the false statement of fact to show what his belief was. The further question as to prejudice to the prospects of election is generally a matter of inference to be arrived at on the facts and circumstances of each case.

32. As against this, the contention of the learned counsel for respondent No. 1 is that the above observations of their Lordships of the Supreme Court are of no avail to the petitioner because the offending pamphlet does not contain any statement of fact relating to the personal character or conduct of the petitioner, but it contains an expression of opinion about his unsuitability for being elected to the Parliament. It has further been contended that the appeal contained in Ext. I was to ensure the safety of democracy and it had nothing to do with the question of prejudicing the prospects of the petitioner in the election. Having considered both these contentions and perused the contents of the offending pamphlet, I am inclined to accept the contention of the learned counsel for the petitioner that it contained statement of facts which are false and that those facts were in relation to the personal character or conduct of the petitioner and they were reasonably calculated to prejudice his prospects in the election. But I am unable to accept the contention of the learned counsel for the petitioner that the petitioner has succeeded in proving that respondent No. 1 believed those statements of fact to be false or did not believe them to be true. In the Supreme Court case, it had been proved that the successful candidate was responsible for the publication of the offending article which was a poem, that the poem in question was read at an election meeting in the presence of the successful candidate and that the booklet containing the offending poem was printed at the instance of one of his polling and counting agents. There it was further held that the successful candidate had seen the booklet containing the offending poem before his election meeting and had read it and that the poem was printed with the knowledge and approval of his election agent. None of these facts has been proved in the instant case. Besides, no evidence whatsoever has been adduced by the petitioner to the effect that respondent No. 1 believed the statement of facts contained in Ext. I to be false or did not believe that to be true. Neither P. W. 1 nor P. W. 29 has said that like the respondent No. 1 also believed that to be false or did not believe them to be true. Therefore, on this matter although the burden of proof which rested upon the petitioner was very light, he has failed to discharge it since he has not even sworn to that effect. In such circumstances, no burden could shift to respondent No. 1 to show what exactly his belief in the matter was. Having failed to show to me any statement in the depositions of P.Ws. 1 and 29 to the effect that respondent No. 1 believed the statements contained in the offending pamphlet to be false or did not believe them to be true, learned counsel for the petitioner relied upon the affidavit of P. W. 1 appended to the election petition at page 41, which is to the effect that the contents of paragraph 51 are true to his knowledge. He argued that upon this affidavit, the burden of proving that respondent No. 1 believed the offending statements to be false or did not believe them to be true, must be deemed to have been discharged. I am, however, unable to accept this contention of the learned counsel. The affidavit attached to the election petition is in compliance with the rules of verification of pleadings contained in sub-rule (1) of rule 15 of Order VI of the Code of Civil Procedure, which as amended by this Court reads:

"Save as otherwise provided by any law for the time being in force, the facts stated in every pleading shall be verified by solemn affirmation or on oath of the party or of any of the parties pleading or of some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, before any officer empowered to administer oath under sec. 139 of the Code."

In other words, the affidavit of P.W. 1 at page 41 is a part of the pleading which by itself cannot take the place of proof in a trial of the case pleaded. The affidavit contemplated by rule 15 cannot be placed on the same level as affidavits within the meaning of Order XIX of the Code. Under rule 1 of Order XIX of the Code any fact or facts may be proved by affidavit, but that can only be done if an order to that effect is made by the Court for sufficient reason, and on such conditions as the Court thinks reasonable. Without the order of the Court, no fact pleaded by a party may be proved by affidavit. The petitioner never obtained an order of the Court in terms of rule 1 of Order XIX, and so it is not

open to him to seek to prove any fact merely on the basis of the affidavit appended to the election petition. In this context I may also point out that as section 92 of the Act of 1951 formerly stood, the Tribunal had powers to receive evidence on affidavits. But as the Act now stands, an election petition has to be tried by the High Court as provided in section 87 "as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits". Therefore, a fact may be proved on affidavit only where the requirements, of rule 1 of Order XIX of the Code have been fulfilled. I, therefore, hold that the petitioner has failed to prove that the statements of fact made in the offending leaflet were facts which respondent No. 1 believed to be false or did not believe to be true.

33. No other question has been pressed at the trial. Therefore, upon the findings which I have recorded above, I hold that the petitioner is not entitled to either of the two declarations which he has sought in this election petition.

34. The result, therefore, is that this election petition fails and is, accordingly, dismissed. The recriminatory petition filed by respondent No. 1 is also appendix 'A' dismissed. The petitioner must, however, pay to respondent No. 1 the costs of this proceeding together with a hearing fee which I assess at Rs. 1,000/-.

35. Let a substance of this decision be communicated to the Election Commission and to the Speaker of the Lok Sabha, and let an authenticated copy of this judgment be forwarded to the Election Commission as soon as possible.

Sd./- G. N. PRASAD.

PATNA HIGH COURT,

The 3rd May, 1968.

#### APPENDIX A

#### ELECTION PETITION NO. 23 OF 1967

In the matter of an application for inspection of ballot papers.

Thakur Jugal Kishore Sinha—*Petitioner.*

*Versus*

Shri Nagendra Prasad Yadav and others—*Respondents.*

#### ORDER

This is a petition on behalf of the election petitioner to permit him to inspect the ballot papers counted in favour of respondent No. 1 and others, as also the rejected ballot papers to enable him to bring the relevant ballot papers on the record as exhibits in support of his case.

2. The election under challenge is the election of Sri Nagendra Prasad Yadav (respondent No. 1) to the Parliament from Sitamarhi Parliamentary Constituency No. 11, held in the month of February, 1967. This Parliamentary constituency is comprised of six Assembly constituencies as follows:—

- (i) Sitamarhi Assembly constituency No. 67
- (ii) Bathana Assembly constituency No. 68
- (iii) Sheohar Assembly constituency No. 70
- (iv) Majorganj Assembly constituency No. 71
- (v) Sonbarsa Assembly constituency No. 72, and
- (vi) Sursand Assembly constituency No. 73



The dates of poll were 17th February 1967, 19th February 1967, and 21st February 1967 in the different constituencies. The counting of ballot papers was held in Sitamarhi Court premises as follows:

Date of counting	Assembly Constituency	Assistant Returning Officer
23-2-1967	Sursand	Sri S. Choudhary.
24-2-1967	Sheohar	Sri K. B. Saxena.
24-2-1967	Majorganj	Sri S. Choudhary.
25-2-1967	Sitamarhi	Sri K. B. Saxena.
25-2-1967	Sonbarsa	Sri S. Choudhary.
25-2-1967	Bathanaha	Sri K. B. Saxena.

On 26th February 1967, certain postal ballots were counted and on the same day the final results of the election were declared by the Returning Officer, who was the District Magistrate of Muzaffarpur. It was announced that the different candidates had secured the following number of votes:

- (i) Thakur Jugal Kishore Sinha—1,40,820 votes (Petitioner)
- (ii) Shri Nagendra Prasad Yadav—1,41,337 votes (Respondent No.1)
- (iii) Shri Jai Kishore Narain Singh—34,004 votes (Respondent No. 2)
- (iv) Shri Bhagwan Sao—31,469 votes (Respondent No. 3)
- (v) Shri Satya Narain Prasad—12,740 votes (Respondent No. 4)
- (vi) Shri Satyanarain Sharma—4,018 votes (Respondent No. 5)

Total number of rejected ballot papers—11,099.

Accordingly, respondent No. 1 was declared to have been elected, since he was found to have secured the majority of valid votes.

3. Immediately, thereafter, the petitioner filed a petition before the Returning Officer for a re-count of the ballot papers on the ground that various types of irregularities and illegalities had been committed at the stage of counting of ballot papers; but the petition for re-count was rejected. The present election petition was filed in this Court on the 11th April, 1967.

4. Respondent No. 1 filed his written statement on the 23rd October, 1967. The issues in the case were framed on the 30th October 1967. The hearing of evidence began on the 27th March, 1968. The petitioner closed his oral evidence on the 12th April, 1968, on 15th April 1968, the present petition for inspection of ballot papers was filed. Arguments in support of the petition were heard on 16th April 1968 and 17th April 1968. Respondent No. 1 closed his oral evidence on the 18th April 1968.

5. It is well settled that an order for inspection of ballot papers cannot be granted as a matter of course. Two conditions must be fulfilled to justify such an order. The first condition is that the election petition must contain an adequate statement of the material facts on which the petitioner relies in support of his case; and the second condition which is very important for our present purposes is that the Court must be *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary. Care must be taken to see that the petitioner does not get a chance to make a roving inquiry in the ballot boxes with a view to justify his claim that the election of the returned candidate is void. Learned counsel for the petitioner does not dispute these principles, but his contention is that both the conditions have been fulfilled in the present case and that this

is a fit case in which the inspection of the ballot papers is necessary for a proper decision of the dispute between the parties. In support of his contention learned counsel has relied upon three paragraphs of the election petition, namely, paragraphs 14, 27 and 28. The relevant passage in paragraph 14 reads:

"The petitioner was, however, informed that a large number of votes polled in favour of him were rejected and some votes polled in his favour were mixed up with the votes polled in favour of other candidates including Respondent No. 1 and 2."

Paragraph 27 is a long paragraph, but it has to be quoted in full:

"That in between the period of counting some of the counting agents used to detect irregularities committed by the authorities in sorting, bundling and counting as well as in wrongfully rejecting the petitioner's ballots and in wrongfully accepting the respondent No. 1's ballot and used to raise objection both orally and in writing but no heed was paid by the counting supervisors and Asst. Returning Officers. Sometimes there were hot exchange of words between the counting party and the Assistant Returning Officers on the one hand and the counting Agents on the other which the petitioner used to pacify by telling the counting agents that they should abide by the decision of the Assistant Returning Officers as the wrongs committed by them are liable to be rectified on inspection by the High Court. However, the following facts were brought to the notice of the petitioner by his counting agents from their memories as the counting agents were not allowed to take any notes of such irregularities in the name of secrecy of ballot papers.

- (a) That the ballot papers marked with the petitioner's symbol were also bundled with the ballot papers of the Respondent Nos. 1 and 2 and in this way about 500 votes cast and marked with the petitioner's symbol at booth Nos. 64, 67, 68, 70, 71 and 85 of Majorganj Assembly Constituency and 41, 48, 49, 76, 79, 80, 87, 94, 95, 97, 98, 99, 101 and 103 in 68 Bathanaha Assembly Constituency, were mixed up and bundled with the votes of the respondents Nos. 1 and 2.

Similarly, the ballot papers marked in favour of other respondents at Booths Nos. 28, 43, 88, 92, 96, 97, 85, 86, 100, 82, 83, in 68 of Bathnaha Assembly Constituency and booth Nos. 2, 3, 17, 25, 42, 45, 46, 70, 71, 75, 60, 77, 83, 92, 93 in 73 of Sursand Assembly Constituency and booth Nos. 4, 5, 9, 10, 15, 16, 28, 29, 42, 58, 62, 84, 91 and 96 in 72 of Sonbarsa Assembly Constituency were mixed up and bundled with the votes of the respondent No. 1. This illegal practice of sorting and scrutinising of ballot papers adopted by the counting authorities was in vogue in the counting of votes of almost all the booths and thereby about 1,000 valid votes of the petitioner as well as of other respondents were mixed up and counted with the votes of the respondent No. 1. Despite the several objections and complaints, the votes of the respective candidates could not be scrutinised and recounted.

- (b) that the ballot papers only marked partially within the column of the petitioner and rest of the mark in the blank area were rejected by the Returning Officer and consequently about 69 ballot papers of the petitioner in booth Nos. 23, 30, 73, 84, 88 and 93 in 67 of Sitamarhi Assembly Constituency were rejected. Similar irregularities were also committed in booth Nos. 6, 13, 19, 36, 58, 65, 82, 89 and 97 in 73 Sursand Assembly Constituency. Similarly, in 71 Majorganj Assembly Constituency and 72 Sonbarsa Assembly Constituency in booth Nos. 37, 61, 67, 85 and 10, 13, 27, 28, 38, 43, 44, 74, 75 respectively, near about 258 ballot papers marked in favour of the petitioner were rejected by the Asstt. Returning Officer.

On many protests and complaints the rejected ballots of booth Nos. 24, 54 and 74 in 72 Sonbarsa Assembly Constituency were checked up by the Asstt. Returning Officer and it was found that 17 votes cast in favour of the petitioner had been improperly rejected.



- (c) that the ballot papers marked partially within the column of the petitioner and rest of the in the column of the respondent No. 1 were counted in favour of the respondent No. 1 as his valid votes and thus about 12 ballot papers of booth No. 28 in 67 Sitamarhi Assembly Constituency were counted in favour of the Respondent No. 1. Similarly, about 28 ballot papers of booth Nos. 30, 47, 74, 78, 88 in 71 Majorganj Assembly Constituency were also counted in favour of the respondent No. 1. On several protests the ballots of booths namely 86, 91 and 74 were only checked up by the Asst. Returning Officer, and it was found that 37 ballot papers had been wrongly accepted in favour of respondent No. 1.
- (d) that the ballot papers marked against the respondent No. 1 and the respondent No. 3 were counted in favour of the respondent No. 1 and consequently about 157 ballots of booth Nos. 1, 3, 4 to 6, 11, 18, 20, 32, 60, 62 in 71 Majorganj Assembly Constituency and in booth Nos. 7, 9, 10, 11, 12, 13, 15, 16, 17, 21, 29 in Sitamarhi Assembly Constituency were accepted in favour of the respondent No. 1.
- (e) that the ballot papers especially marked in the column of the petitioner but the impression due to wrong folding appearing in the column of the respondent No. 1 were accepted and counted in favour of the respondent No. 1. About 165 valid votes of booth Nos. 3, 7, 14, 15, 33, 34 in 70 Shehar Assembly Constituency and 6, 21, 36, 51, 77, 78, 83, 24, 95 in 68 Bathnaha Assembly Constituency and of booth Nos. 2, 4, 6, 9, 10, 28, 29, 46, 68, 75, 93, 94 in 67 Sitamarhi Assembly Constituency, marked in favour of the petitioner were improperly accepted and counted in favour of the respondent No. 1. The counting agents used to raise objection from time to time but no heed at all times was paid by the Asst. Returning Officer.
- (f) that the ballot papers with a mark within the column of the petitioner but smudge against that of respondent No. 1 and 2 were rejected. About 200 votes cast in favour of the petitioner at booth Nos. 8, 12, 19, 30, 47, 55, 71, 72, 83, 84, 88, 89, 90 of 72 Sonbarsa Assembly Constituency were rejected by the Asst. Returning Officer.
- (g) that the ballot papers specially marked in favour of the petitioner but the impression due to wrong folding appearing in the column of the respondent No. 2 were accepted and counted in favour of the respondent No. 2. Due to this about 250 votes cast in favour of the petitioner at booth Nos. 10, 11, 12, 13, 16, 31, 35, 36, 50, 51, 57, 58, 59, 75, 78, 85, 99 in 72 Sonbarsa Assembly Constituency and booth Nos. 22, 26, 33, 35, 38, 45, 46, 67, 83, 84, 86, 87, 89, 90 in 67 Sitamarhi Assembly Constituency were counted with the votes of the respondent No. 2.
- (h) this method of counting adopted by the Asst. Returning Officer continued till the last moment and about 1200 valid votes of the petitioner were rejected as well as counted with the votes of the respondents No. 1 and others."

Lastly, paragraph 28 reads:

"That as a result of the aforesaid illegalities committed by the Assistant Returning Officer, more than 200 valid votes cast in favour of the petitioner were rejected as invalid votes and more than two thousand votes cast in favour of the petitioner and other candidates were mixed up with the votes of respondent No. 1."

6. Learned counsel for the petitioner points out that in paragraph 27 adequate particulars of the different kinds of irregularities and illegalities in the counting of ballot papers of each of the six Assembly Constituencies have been set out and, therefore, the first condition to justify an order for inspection of the ballot papers must be deemed to have been fulfilled. Learned counsel for the petitioner has then drawn my attention to the evidence of 21 witnesses who have been examined in support of the petitioner's case relating to the alleged irregularities and illegalities in the counting of ballot papers in respect of all the six Assembly constituencies. These witnesses have deposed that they had acted as counting

agents of the petitioner in the counting of the ballot papers of the different constituencies as follows:

Date	Assembly constituency	Witnesses
23-2-1967	Sursand	P. Ws. 1, 8, 11, 14, 16, 20 and 23
24-2-1967	Sheohar	P. Ws. 1, 9, 12, 15, and 23
24-2-1967	Majorganj	P. Ws. 3, 4, 5, 6, 7, 14, 16, 17, & 20
25-2-1967	Sitamarhi	P. Ws. 1, 6, 7, 10, 11, 15 and 20
25-2-1967	Sonbarsa	P. Ws. 5, 13, 16, 17, 18 and 23
25-2-1967	Bathanaha	P. Ws. 1, 2, 3, 9, 11, 13, 14, 15, 17, 18 and 23.

Besides, the petitioner himself as P.W. 29 has deposed about such irregularities and illegalities in the matter of counting of votes. He has also proved his petition (Ext. 3) which he had filed before the Returning Officer at Muzaffarpur on 26th February 1967, and another petition (Ext. 3) which he had filed before the Assistant Returning Officer at Sitamarhi on the 25th February, 1967.

7. According to the case put forward on behalf of the petitioner, irregularities and illegalities of substantially the same categories were committed on all the three dates of counting in respect of the ballot papers of all the six constituencies. They may be summarised as follows.

- (i) Ballot papers which bore cross marks in favour of the petitioner were counted in favour of respondent No. 1 or in favour of respondent No. 2;
- (ii) Ballot papers which were fit to be rejected were counted in favour of respondent No. 1;
- (iii) Ballot papers validly marked in favour of the petitioner were rejected;
- (iv) Ballot papers bearing cross marks on a substantial portion of the petitioner's symbol but extending a little in the shaded area were rejected as invalid;
- (v) Ballot papers bearing cross marks on the petitioner's symbol in which some ink stain or impression due to defective folding appeared in the column of respondent No. 1 or respondent No. 2 were counted as valid votes of the latter, as the case might be;
- (vi) Ballot papers in which cross mark in the column of the petitioner was smudged were rejected. All the 21 witnesses referred to above have deposed to such irregularities in whole or in part in their own way. Several of them have also specified the serial numbers of some of the booths in regard to which they claim to have seen such irregularities in counting being done. For example P.W. 3 has deposed:

"On 24th February 1967 I noticed that many ballot papers bearing cross mark on tree symbol were bundled up with ballot papers bearing cross mark on bullock symbol. Ballot papers bearing faint cross mark on tree symbol used to be rejected as invalid. In this manner five or seven ballot papers were rejected as invalid. Ballot papers containing cross mark in a major portion of the tree symbol and the rest on the shaded portion used to be rejected. In this way 10 or 15 ballot papers were rejected as invalid. Ballot papers bearing only a small portion of cross mark on the horse symbol and major portion on the shaded area used to be counted as valid ballot papers in favour of the candidate with horse symbol. I had seen such irregularities being committed on my counting table. On table No. 11 where I was seated, I had noticed such irregularities in respect of ballot papers of booths Nos. 11, 47 and 71. In all, 50 or 55 ballot papers were invalidly dealt with on that table in my presence."

In regard to the counting of Bathanaah ballot papers which he had seen on 25th February 1967, P.W. 3 has said that he had seen irregularities of similar kind being committed in the matter of counting of ballot papers in respect of booth Nos. 86 and 101, of which 30 or 40 ballot papers were wrongly dealt with. Likewise, P.W. 4 has claimed to have seen irregularities of such character in the counting of ballot papers of Majorganj booths Nos. 62 and 74. P.W. 5 saw the same thing about the ballot papers of Majorganj booth No. 69 and Sombarsa booth No. 62. P.W. 6 has deposed about such irregularities particularising Majorganj booth Nos. 7, 19, 31, 43, 55, 67, 79 and 91, and P.W. 7 spoke about the ballot papers of Majorganj booth No. 64, in particular. Similar is the evidence with respect to ballot papers of particular booths of some of the other witnesses, such as P.W. 9, who has particularised booths Nos. 85 and 100 of Bathanaah, P.W. 10, who has particularised Sitamarhi booth No. 15, P.W. 12 who has particularised Sheohar booths Nos. 22 and 34 and P.W. 14 has spoken about Sursand booths Nos. 2, 14, 26, 38, 50 and 62, in particular.

8. At first sight it would no doubt appear that the petitioner has lead specific evidence to a considerable extent in support of the case set up by him with respect to some of the specific booths of each of the six Assembly constituencies, but a little close examination will make it abundantly clear that what is apparent is not the real state of things.

9. At this stage it is necessary to refer to the petitioner's own case in paragraph 21 of the election petition where it has been stated:

"That three persons used to scrutinise and count votes on each counting table at a time, making it impossible for the counting agents of the petitioner to examine whether the scrutiny and sorting of ballot were being done properly."

I have already quoted paragraph 27 in which grievance has been made of the fact that the counting agents of the petitioner were not allowed to take any notes of irregularities "in the name of secrecy of ballot papers", and that all the facts stated in sub-paragraphs (a) to (h) of paragraph 27 were brought to the notice of the petitioner by his counting agents from their memories. Again in his petition (Ext. 3) to the Assistant Returning Officer, the grievance of the petitioner, *inter alia* was that on account of insufficient light and the continuance of counting till late hours, his counting agents could not attend to the counting properly as they were also feeling sleepy. Therefore, it does not stand to reason that the counting agents of the petitioner could have noticed such large scale irregularities in the matter of counting of ballot papers which they could have retained in their memory even up to the stage when the petitioner had drawn up his election petition on the basis of information given to him by them. If there was no adequate facility for knowing the actual manner in which the counting of ballot papers had taken place, then it is manifest that all the particulars of the irregularities which are to be found in sub-paragraphs (a) to (g) of paragraph 27 of the election petition have been said from imagination. Likewise, if the counting agents were not allowed to take any notes of such irregularities, then it is inconceivable that those persons could have retained in their memory the serial numbers of the booths in respect of which they claim to have seen particular categories of irregularities in counting. That would indicate that the claim which several of the counting agents of the petitioner have made about remembering the irregularities in counting of ballot papers of specific booths is *prima facie* unacceptable.

10. Faced with the situation that it would be impossible to induce the Court to hold that the counting agents of the petitioner were all the time retaining in their memories the serial number of booths in connection with particular kinds or irregularities in counting, some of the witnesses stated that they did prepare notes of such irregularities. One such witness is P.W. 5, who has said:

"I had made a note of my own about the irregularities in the counting of ballot papers which I could observe. That note of mine is no longer in my possession as I had handed it over to Ramanarash Singh (P.W. 1) on the same day. Before coming to depose in this Court I have refreshed my memory about the various particulars, of irregularities in counting which I have described by looking into my said note in possession of Ramnareish Singh."

Not only the evidence of P.W. 5 is in conflict with the case set up by the petitioner in his election petition, but it also betrays the fact that P.W. 5 or other

witnesses on the point of counting did not remember anything about the particulars of irregularities in counting in respect of ballot papers of individual booths. They seem to have deposed with reference to some artificial, notes prepared merely for the purpose of helping them in giving evidence in Court. I may also refer to the evidence of P.W. 11 who has said:

"At the conclusion of the counting of Sursand ballot papers, I had, on 23rd February 1967, presented a petition containing my objections before the Assistant Returning Officer....In the said petition of mine I had described the various categories of irregularities which I had noticed in course of the counting. On the same evening I had told Thakur Saheb the fact that so many ballot papers of such booths had been wrongly accepted and so many ballot papers of such and such booths had been wrongly counted. I had also on the same occasion told Thakur Saheb in broad outline the different categories of ballot papers wrongly dealt with during counting. It is possible that I have in my possession a copy of my petition which I had handed over to the Assistant Returning Officer on 23rd February 1967. I had handed over that copy of my petition to Thakur Saheb so that he might file it in the present election case. That petition of mine or its copy, if produced before this Court, will reveal the details of illegally rejected and wrongly counted ballot papers of each booth of Sursand constituency."

It is manifest that all this evidence of P.W. 11 is, on the face of it, unreliable. It is entirely inconsistent with the case set up in paragraphs 21 and 27 of the election petition and with the complaint of the petitioner made in Ext. 3. Had the evidence which P.W. 11 has given been true, then the petitioner would not have stated that he has done in Ext. 3 and would have taken steps to get the alleged petition or note of P.W. 11 dated 23rd February 1967 proved on his behalf. Then that would have corroborated the claim which P.W. 11 has made about having observed illegalities of irregularities in the matter of counting of ballot papers of particular booths and of particular categories. The non-production of such papers must lead to the inference that P.W. 11 and other witnesses of this type have given evidence which is, on the face of it, unacceptable. Similar is the case with the evidence of P.W. 12 who has claimed not only that he had handed over a rough note which he had made boothwise about the number of wrongly rejected and wrongly counted ballot papers to the petitioner on the day of counting itself, but that the petitioner had also filed a petition before the Returning Officer, after the conclusion of the counting, on 24th February 1967, incorporating therein specific details of the different irregularities in the counting of ballot papers. Upon the petitioner's own case, such evidence is unacceptable. P.W. 18 also has gone beyond the case of the petitioner by saying that he had made rough notes of the irregularities in counting which had come to his notice and that he had handed over his rough notes to the petitioner.

11. The whole attempt of some of the witnesses of the petitioner to induce me to hold that they had seen and remembered about the different types of irregularities in counting the ballot papers of some of the specific booths because they had made their own notes in regard to them has failed. But if, on the other hand, none of the counting agents had made any note relating to these matters, as the petitioner's own case seems to indicate, then it is impossible to believe that these witnesses could have orally remembered all the while what particular type of irregularities were committed in respect of the ballot papers of what particular booths. Even on this footing, therefore, their evidence appears to me to be *prima facie* unacceptable. On the other hand, such of the counting agents of the petitioner who did not claim to have made any notes or filed any petition, cannot expect this Court to act upon their own vague or general evidence relating to every conceivable category of irregularities in the counting of ballot papers.

12. The unreliable character of the evidence adduced by the petitioner is clear from another circumstance. Several of the witnesses of the petitioner asserted in their evidence that in respect of the irregularities which some of them saw being repeatedly done in the counting of ballot papers, they had filed written petitions before the Assistant Returning Officer. I have already made reference to one such alleged written petition of P.W. 11, a copy of which he claimed to have handed over to the petitioner so that he might file it in the present election case. That petition has neither been called for, nor its copy has been produced in evidence on behalf of the petitioner. The inference is obvious that the evidence thus given by P.W. 11 is unbelievable. Another witness P.W. 23 has claimed that he had filed not less than six protest petitions before the Assistant Returning



Officers at the stage of counting; one on 23rd February 1967, two on 24th February 1967 and three on 25th February 1967, relating to the illegal disposal of ballot papers, but none of those petitions are forthcoming in this case. Written petitions are also claimed to have been filed before the Assistant Returning Officer by P.Ws. 1, 2, 7, 9, 15 and 27. Alleged copies of some of them have also been joined as Annexures 'A', 'B', 'C' and 'D' to the election petition, but none of them has been exhibited in the case, thereby destroying the reliability of the evidence which the petitioner has adduced in support of this part of his case.

13. Many of these witnesses have claimed that they had orally informed the petitioner about the different categories of irregularities in the counting of ballot papers, and yet the petitioner wrote in Ext. 3 that adequate opportunity was not afforded to his counting agents to see how the counting was being done. If Ext. 3 were to be preferred as a contemporaneous record, then the entire oral evidence adduced in Court about the petitioner having been informed either orally or in writing about the various categories of irregularities, deposed to by his witnesses, is falsified.

14. In this connection it should also be borne in mind that according to the evidence of some of the witnesses of the petitioner such as P.Ws. 7, 10 and 14, the petitioner had personally visited the counting chamber when the counting was going on. P.W. 7 has deposed:

"While counting was in progress, Thakur Saheb used to visit the counting chamber, and to him also I had mentioned about the various irregularities in counting, as described by me."

P.Ws. 10 and 14 have both said that the petitioner had come to the counting chamber while the counting was going on. In his own evidence the petitioner (P.W. 29) has said that he had visited the counting chamber from time to time on each of the three dates. On 23rd February 1967, he was there for about ten minutes at the stage when the counting was on the point of being closed. On 24th February 1967 he was there for about 45 minutes. The petitioner has further deposed that some of his counting agents had told him that they had filed protest petitions and some others had said that they had raised oral protests before the Assistant Returning Officer but "I did not consider it necessary to file any petition before the Asst. Returning Officer or the Returning Officer either on 23rd February 1967 or 24th February 1967". He has further admitted that Ext. 3 was the only petition which he had filed before the Assistant Returning Officer regarding the countings held on 23rd February 1967 and 24th February 1967" on the basis of the information which my counting agents had given to me concerning the illegalities and irregularities in the counting of ballot papers. Besides such information of my counting agents, I had also based my petition (Ext. 3) upon the results of test checks held on 23rd February 1967 and 24th February 1967". Therefore the alleged information which the counting agents gave to the petitioner was that they were unable to observe properly how the counting was being done on account of various reasons, such as, insufficiency of light or sleepiness. Therefore, the whole case set up in sub-paragraphs (a) to (h) of paragraph 27 of the election petition appears to me to be product of imagination, being based upon information which could never been given to the petitioner by any of his counting agents. That seems to me the reason why even in Ext. 2, which the petitioner filed before the Returning Officer on the following day, no mention was made of the serial number of a single booth which are to be found in paragraph 27 of the election petition. It seems to me, therefore, that all the particulars given in paragraph 27 are based upon imagination, and not upon information which the petitioner could have gathered either himself or through his counting agents.

15. The petitioner was not an ordinary candidate in the election. He had fought three general elections, though unsuccessfully each time. He had been returned to the Parliament once in a bye-election in 1952-53. In 1962, respondent No. 1 was his rival but when the petitioner lost that election, he filed an election petition against respondent No. 1, though it was unsuccessful before the Tribunal as well as the High Court. The petitioner (P.W. 29) has admitted:

"I have read the election law several times. I have also read several decisions on election law."

Therefore, had the different witnesses deposed truly that they had informed the petitioner about the various categories of irregularities in the matter of counting of ballot papers, specially in respect of particular booths, then the petitioner would not have worded his petitions (Exts. 2 and 3) as he has done. He would not have said Ext. 3 that his counting agents had seen nothing, and in Ext. 2

he would not have omitted to mention all or most of the particulars which he has mentioned in sub-paragraphs (a) to (h) of paragraph 27 of the election petition. Ext. 2 would never have remained silent about any booth of any of the six constituencies. Therefore, it seems to me that it was from pure imagination after 26th February 1967 that certain particulars were thought out and incorporated in the election petition, and for the purpose of proving them a large number of witnesses have been examined, several of whom have deposed about specific booths from pure imagination, since there is nothing in their evidence from which one can think that they could have some special reason to remember how the ballot papers of any particular booth or booths were dealt with, more than one year ago. I, therefore, do not feel impressed either with the case which the petitioner has set up in paragraph 27 or with the evidence upon which he seeks to rely. The case set up in the election petition is self contradictory and the evidence adduced by the petitioner is *prima facie* unacceptable.

16. The result sheet in Form 20 would show that on the first day of counting, namely, at the counting of Sursand ballot papers, the petitioner had secured 22,259 less votes than respondent No. 1. Therefore, if such large scale bunging in the counting of ballot papers would have taken place, then the petitioner would not have remained quiet and merely applied for test-checks from time to time, but would have filed his protest petition on 23rd February 1967 itself, or on the following day. To me it appears that the entire case relating to irregularities in the matter of counting of ballot papers set up at great length in the election petition is a product of the petitioner's imagination. That being so, it cannot legitimately be maintained that the petitioner has made out a *prima facie* case to justify an order for inspection of the ballot papers.

17. The petitioner has challenged the integrity of both the counting officers, Sri K. B. Saxena and Sri S. Choudhary. His evidence is that he had dispute with both of them. But it is significant to note that in his petition (Ext. 2) before the Returning Officer, the petitioner made no complaint against the integrity of either of the two Assistant Returning Officers. In Ext. 2, the case which the petitioner put forward before the District Magistrate was "that some of the members of the counting party and counting supervisors were prejudiced from before against the petitioner and many of them under both heads collecting party and counting supervisors were friends and distant relative of Shri Nagendra Prasad Yadava". Therefore, the grievance which the petitioner has made against the Assistant Returning Officers is obviously an after-thought and no order for inspection of ballot papers can be justified on the ground that the Assistant Returning Officers were biased against the petitioner.

18. Great stress is laid on behalf of the petitioner upon the fact that as a result of certain test-checks held during the counting at the instance of the petitioner, certain mistakes were noticed which were set right. In this context, learned counsel for respondent No. 1 made an offer to the learned counsel for the petitioner to specify the serial numbers of a few booths, the ballot papers of which could be inspected in order that the evidence which the petitioner has given as to the categories of irregularities might be tested and checked up. But learned counsel for the petitioner did not agree to this suggestion and insisted that the ballot papers of each and every booth, the total number of which is 577 in all the six Assembly Constituencies, should be opened up and inspected. It seems to me that the real purpose of the present inspection petition is to take a chance and make a reviving inquiry into the ballot boxes with a view to prove, if possible, that the results of the election were materially affected on account of wrong counting of ballot papers. In my judgment, it will not at all be in the interest of justice to expose the secrecy of the ballot papers of 577 booths for any such purpose.

19. Even in Ext. 3, the petitioner could not assert that he had secured a majority of valid votes. There he said:

"As there is a margin of few votes and so we expect that on recounting the results may be otherwise."

20. Thus, having given a very careful consideration to the prayer made on behalf of the petitioner, I have come to the conclusion that this is not a fit case in which I would be justified in allowing the petitioner an access into the ballot papers so that he might fish out evidence in support of his case.



21. The result, therefore, is that the petition for inspection of the ballot papers is rejected.

Sd./- G. N. PRASAD.

PATNA HIGH COURT.

The 23rd April, 1968.

[No. 82/BR-23/67.]

New Delhi, the 10th July 1968

**S.O. 2547.**—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 15th May, 1968 by the High Court Judicature at Patna in Election Petition No. 24 of 1967.

ELECTION PETITION No. 24 OF 1967

In the matter of an application under section 80A and 81 of the Representation of the People Act.

Sri Mohan Singh Cheroi—*Petitioner.*

*Versus*

Sri Alhaj I. Ahmad—*Opposite Party.*

*For the petitioner:* Messrs. Kanhaiya Prasad Verma, Akhoury Binod Sekhar Sinha, Devendra Prasad Sinha and Kamla Kant Prasad.

*For the opposite party:* Messrs. Braj Kishore Prasad II and Kamal Nayan Chobey.

**PRESENT:**

The Hon'ble Mr. Justice A.B.N. Sinha.

A. B. N. SINHA, J.—The petitioner, Sri Mohan Singh Oberoi, has filed this application under section 80A and 81 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') challenging the election of the respondent, Sri Alhaj I. Ahmad, who has been elected to the Lok Sabha from the single member Giridih Parliamentary constituency at the last general election.

2. At the last Parliamentary election held in February, 1967, there were four candidates including the petitioner and the sole respondent for election to the Parliament from the Giridih Parliamentary Constituency. The petitioner was the Jan Kranti Dal candidate, while the respondent was the Congress candidate. The candidates for the Communist Party and the Jan Sangh Party were Sri Shakti Kant Sahaya and Sri Ram Krishna Prasad respectively. While the respondent the Congress candidate secured at the said election 70,219 votes the petitioner—the Jan Kranti Dal candidate secured only 66,388 votes; and the other two candidates, namely, Sri Ram Krishna Prasad—the Jan Sangh candidate secured 37,915 votes and Sri Shakti Kant Sahay—the Communist candidate secured 25,561 votes. The counting was done on the 26th February, 1967, and the respondent was declared elected to the Lok Sabha from the Giridih Parliamentary constituency.

3. In the election petition, the election of the respondent has been sought to be challenged on more than one ground, but the only ground which has been pressed at the hearing and in support of which evidence has been adduced, is the ground relating to the alleged commission of corrupt practices as defined in sub-sections (3), (3A) and (4) of section 123 of the Act by the respondent himself or by his election agent or by other agents and workers with the consent of the respondent or his election agent. The challenge that the election petition was barred by limitation or that there was any defect in the verification of the election petition and that the respondent was not qualified to be a candidate for election from the Giridih Parliamentary constituency, and that the acceptance of the nomination paper was illegal and invalid, was not pressed, and no evidence was led

on these points. Thus, of the five issues, which were framed in this case, the only issue which falls for determination is issue No. 4. which reads as under,

“Did the respondent or his election agent or other agents and workers, with the consent of the respondent or his election agents, commit corrupt practices as alleged by the petitioner in paragraph 9 to 26, and has the result of the election been materially affected thereby.”

4. The relevant allegations as made in the election petition and their denial as made in the respondent's written statement on which the above issue was raised may now be briefly set out. Paragraph 9 states that the respondent, his election agent, his agents and workers with their consent committed corrupt practice under section 123(3) and section 123(3A) of the Act. In paragraph 10 of the petition, it has been alleged that the respondent was a Muslim and that he and his agents including the election agent and supporters with his consent had sought votes from the Muslim voters in the constituency on the ground of Muslim religion and community, and, further that they were making appeals to those to refrain from voting in favour of the Communist and other candidates in the name of the religion and community. In paragraph 11, it has been alleged that the respondent along with his supporters and agents including his election agent had promoted feelings of enmity and hatred between Muslims and non-Muslims as well as between Muslim and Communist and others on the one hand and Jan Sangh on the other for the furtherance of the prospect of the respondent's election and for practising the election of the other candidate. In paragraphs 12 and 13, it has been stated that the respondent in order to secure the votes of the Muslim voters, who constituted a large percentage of the total population of the Giridih Parliamentary constituency and further in order to create enmity and hatred between the Muslim and non-Muslim, had got three leaflets (Annexure A, B, and C to the petition) printed and published in the name of one Moultvi Md. Manjour Alam, who was a religious leader of the Mohamadans and who was a supporter of the respondent, against the provisions of sub-sections (3) and 3A of section 123 of the Act. Two of the leaflets were printed at Madhukar Press, while the third at Tilak Press, both situated at Giridih. It was alleged that these leaflets were distributed by and on behalf of the respondent of the aforesaid three offending leaflets, one having the caption “Interwadi Fatwa” (election command) and the other having “Insan Numa Darinde” (human cannibal) were printed at Madhukar Press; and, the third which was printed at Tilak Press, Giridih, had the caption “aaj ka election” (Today's election). The leaflet, marked Annexure ‘A’ according to paragraph 14, was issued in the name of God and religion by a religion head to the Muslim voters in the constituency to vote for the respondent as also to create hatred against the non-Muslim voters. In paragraph 15, it has been alleged that the three offending leaflets were read out at the election meetings on different dates, and the contents were amplified by the respondent and his supporters and they were also distributed among the voters. While the statement made in paragraphs 16 and 17 are more or less repetitions of what has been stated in paragraphs 10 and 11, in paragraph 18 the petitioner has made out a case that the respondent and his agents and supporters in presence of the respondent not only read out and distributed the offending leaflets at different places on different dates but also made oral appeals in the name of Muslim religion and community with a view to secure Muslim votes in favour of the respondent and to promote feelings of hatred between Muslims and non-Muslims voters. Paragraph 19 seeks to give the particulars about the meetings held by the respondent along with his agents and supporters at which, it was alleged, the aforesaid three leaflets were explained and distributed and oral speeches were made. By means of an amplification petition, the words “at other places on different dates by his Election Agent, Sri Mohiuddin Ahmad, along with other workers of Respondent” as occurring in paragraph 19 were sought to be amplified and as many as four dates were further given on which it has alleged the Election Agent of the Respondent along with other workers if the Respondent held meetings at four different places wherein the contents of the offending leaflets were read out and explained and those leaflets were distributed. In paragraph 20, the source from which the leaflet marked Annexures ‘A’, and ‘C’ were received by the Petitioner has been stated and it has been further stated that some other voters who had received the aforesaid leaflets have preserved them on the advice of the workers and well-wishers of the petitioner and of the other two defeated candidates. In paragraphs 21, 22 and 23 and 25, it has been alleged that either through reading out the contents of the offending leaflets or by making oral appeals on the same lines as the contents of those leaflets, the Respondent or his supporters who were all communal-minded persons committed corrupt practices within the meaning of section 123(3) and section 123(3A) of the Act. In paragraphs 24 and 26, it has been alleged that the respondent, his agents and workers with his consent also committed, whether

by distributing the leaflets like Annexures A and B or otherwise, corrupt practices within the meaning of sub-section (4) of section 123 of the Act by making statements against the personal character and conduct of other candidates which were false and which the persons responsible for the distribution of the leaflets or for making oral speeches did not believe to be true. From the particulars mentioned in paragraph 19 of the petition and from those mentioned in the amplification petition, it appears that meetings were alleged to have been held at as many as eleven places within the constituency on different dates from the 4th February, 1967 to the 18th February, 1967; and, at least at seven of those meetings, namely, at Satgawan on the 12th February, 1967, at Bermo and Durai on the 18th February, 1967, at Dhanwar on the 14th February, 1967 at Damua on the 16th February, 1967 and at Giridih and Pachamba on the 18th February, 1967, the respondent is alleged to have personally attended. The meeting alleged to have been held at Bengabad on the 4th February, 1967, at Chaphuari on the 5th February, 1967, at Dhalskdiha on the 16th February, 1967 and at Maheshmudda on the 12th February, 1967 are alleged to have been attended by the respondent's Election Agent, Sri Mohiuddin Ahmad, alongwith other workers of the respondent.

5. The respondent in his written statement filed on the 3rd July, 1967, has categorically denied the truth of each and every allegation made in paragraphs 9 to 26 of the election petition. He has asserted that no corrupt practice, as alleged, was committed by the respondent or by his election agent or by the respondent's other agents or workers with the respondent's or his Election Agent's knowledge or consent. Neither he nor his election agent or any one on his behalf to his knowledge or with his consent sought vote from any member of the Muslim community in the name of the Muslim religion or community, nor was ever any appeal made by Muslim voters to refrain from voting the Communist or other candidates on the ground of religion. It has been further asserted that it is absolutely baseless to say that the respondent or his Election Agent or any of his agents or supporters ever created any feeling of enmity and hatred between the Muslims and non-Muslims. The respondent has categorically denied the Publication or distribution of any leaflets in contravention of the provisions of sections 123(3) and 123(3A) of the Act. In fact, according to the respondent, he did not get any of the leaflets mentioned in paragraph 13 of the election petition printed, nor did he get them published in the name of Moulvi Mohammad Manzoor Alam, who, according to the respondent, was not a supporter of his. Indeed, the respondent did not even know that Moulvi Mohammad Manzoor Alam was a religious leader of the Muslims in the Giridih Parliamentary constituency and the respondent had no knowledge about the distribution of any of the leaflets in question any where at any time, as alleged. It has been asserted that the respondent had no knowledge about the existence of the leaflets mentioned in paragraph 13 of the election petition and annexed as Annexures A, B and C to the said petition until his attention was drawn in the office of the Congress Mandal Committee, Giridih, on the 15th February, 1967 to the issue of 'Ranchi Express' a Hindi weekly published from Ranchi dated the 12th February, 1967, where in extracts of certain pamphlets under the heading "AJKA ELECTION", "ENTEKHAB FATWA", and "INSAN NOMA DARINDE", supposed to have been printed at the Tilak Press, Giridih had been published, and that on perusal of the same the respondent alongwith Shri Raghunandan Ram, M.L.A., (R.W. 5) and Shri Ram Narain Prasad, Advocate, President, Mandal Congress Committee Giridih (R.W. 4) issued a contradiction to the same in a pamphlet published under their signature from the Quality Printers' Press Giridih, on the 16th February, 1967 and got the said pamphlet distributed widely throughout the constituency. Therein, they denied any connection with the leaflets purported to have been published by Md. Manzoor Alam stating clearly that those leaflets had been published or printed without the consent of the Congress Committee or the Congress candidate and that whoever had published them had so published in conspiracy and collaboration with the opponents of the Congress candidate in order to damage their cause. In paragraph 23 of the written statement, it was asserted that the leaflets, as they are, did not contravene the provisions of section 123 of the Act. The particulars, as mentioned in paragraph 13 or paragraph 19 of the election petition, were characterised as vague, lacking in specifications and of a too general nature which made it impossible to specifically deny the allegation made therein. The allegations made in paragraph 26 of the election petition about the oral statements and speeches against the personal character and conduct of other candidates by the respondent or by his election agent or workers has also been emphatically denied.

6. On the pleadings summarised above the questions which arise are: (1) whether the offending leaflets fell within the mischief of clauses (3) and (3A) of

section 123 of the Representation of the People Act, 1951; (2) whether the respondent got those leaflets printed and published; (3) whether the case that the respondent or his election agent had read out, explained and distributed those leaflets and had made oral speeches on the lines of those leaflets at places and on dates as mentioned in paragraph 18 of the election petition or in the amplification petition in respect thereof was true; and, (4) whether the case that the respondent, his agent and his workers with his consent committed corrupt practices within the meaning of clauses (4) of section 123 of the Act by making statements against the personal character and conduct of other candidates which were false and which the persons who made those statements did not believe to be true was established.

7. On the question whether the contents of the offending leaflets fell within the mischief of clauses (3) and (3A) of the Act, it will not be necessary to discuss the contents of Ext. 3(a), which is the manuscript copy of Annexure C to the petition, because learned counsel for the petitioner hardly addressed any argument in respect of the same. Nothing was in respect of Annexure B to the petition as well. It was, however, urged that the contents of Ext. 3 which was the manuscript copy of Annexure A to the petition, offended against clauses (3) and (3A) of section 123 of the Act.

8. Annexure A (1) to the Election Petition, which is the English rendering of Ext. 3 reads as under;

"Election Command:

We have unfurled the flag of Islam everywhere and lowered the heads of pagans in the passes of Khybr Amir Shreeat of Bihar & Orissa, Kanab Mintuallah Sahib's one election command question.

Is it proper to vote the Communist Party into power (or) not? A religious command may be issued so that Muslims of Bihar and Orissa can act on it.

In answer to this, Janab Mintuallah Sahib has given the following 'Fatwa'.

A synonym for the movement against God and religion is Communist. Moreover, the economic system enjoined by Communism is entirely antithetical to the tenets of Islam.

Islam believes in private property. Islam has recognised 'Zakat', 'Isher', 'Sadka' and 'Fitra'. Based on this Islam has set up a law of succession for property after man's death. According to this law of inheritance enjoined by Islam, the property devolved on the successor of the deceased. Communism denies and denounces private property. In terms of Communism everything belongs to the state. If a Muslim dies, Islam will ensure property to his rightful successor. Communism says that the entire property should be vested in the State Bank. In view of the above it is not proper for a Muslim to vote an anti-God a theistic party, which is absolutely opposed to the fundamental and basic tenets of Islam. Mintullah Aamir Shreeat, Bihar and Orissa (7, Ramzan 81 Hijree).

NOTE:—Beware of the fraud and deceit of the Communist Party. In 1962 elections, the Communist Party framed up cases against some so called Muslims and made them tender false evidence in courts but in spite of that Ramzan Mian and Badri Bhuian, etc., were released by the authority and a case is still pending in Hazaribagh.

Communist parade themselves as peace mongers. They outwardly pamper labour but really eat into their vitals. Therefore, it is incumbent on religious grounds, to oppose communist.

We have to live here and we have to die here. If we are destined for death why should be be afraid of death."

9. The contents of the leaflets in question as quoted above show that the Muslim voters of the constituency were asked though if not to vote for the Communist Party because communism was "against God and religions", and the economic system enjoined by communism was "entirely antithetical to the tenets of Islam". The leaflet further says that the Communist Party has been guilty of fraud and deceit and has got false cases started against some "so called Muslims" and that its members paraded themselves as "peace mongers" and though they outwardly pampered labour they "really eat into their vitals". It ends by saying that it was incumbent on religious grounds to oppose the Communists. On these contents; it has been argued on behalf of the petitioner, that it must be held that an appeal was made to the Muslim voters to refrain from voting for the Communist candidates on religious grounds, and, as such the leaflets offended against the first part of sec. 123(3) of the Act. Apparently what appears to be



contained in the leaflet (Ext. 3) in a tirade against communism which was the ideology of the Communist Party and the writer is quite clearly anxious to bring home to the Muslim voters that as communist as such was opposed to the tenets of Islam the following of that religion should not vote for the Communist Party. Thus, an appeal to the Muslim voters to refrain from voting for the Communist candidates at the election in question on religious grounds may be said to be implied in the contents to the offending leaflets, through the economic system propounded by communism has also come in for attack and thus the appeal can also be said to be partly founded on economic grounds. An attempt was, however, made on behalf of the respondent to show that on the facts of this case the leaflets could hardly be interpreted as implying an appeal to refrain from voting for a Communist candidate, in as much as, the leaflet was given for printing on 18th January 1967 which was two days earlier to the last date fixed for filing nomination papers and as such, it was urged that the writer could hardly have known that there would be Communist candidate at the ensuing election. In my opinion, there is no substance in this plea. 20th January, 1967 was the last date for filing nominations and there is no reason to suppose that Sri Shakti Kant Sahay, the communist candidate for the Parliamentary election and Shri Saifque Khan, the Communist candidate for the Assembly election from Bermo constituency had not filed their nominations earlier or it had not become known that they were going to contest the elections as candidates for the communist party. Generally, there is a wide spread knowledge amongst people who take any interest in politics, either local or otherwise even before nominations are filed about the candidates likely to contest the elections as also about their respective party affiliations. The contents of Ext. 3 themselves show that the writer of the leaflet was not in ignorance. Accordingly, there appears to be no difficulty in coming to the conclusion that the contents of Ext. 3 by implication amounted to an appeal to the Muslim voters to refrain from voting for the Communist candidates on religious grounds. But even if that was so, I am of the opinion, that the leaflet did not come within the mischief of the first part of section 123(3) of the Act. The question of the leaflet coming within the purview of the second part of that section does not obviously arise. There is considerable force and substance in the contention of the learned Counsel for the respondent that corrupt practices within the meaning of first part of section 123(3) of the Act can be said to have been committed only when an appeal was made to the electorate on a ground which was personal to the candidate for whom or against whom the appeal had been made, and related to the religious, race, caste, community or language of the candidate concerned. In the instant case, it was urged on behalf of the respondent that there being no appeal to vote or refrain from voting on the ground of the religion of the candidate concerned, the provisions of section 123(3) of the Act were not attracted. It was submitted that the publication of the leaflet (Ext. 3) really amounted on the part of its writer to an exercise of the fundamental right guaranteed under Article 25 of the Constitution, and thus its publication could not be regarded as a corrupt practice within the meaning of section 123(3) of the Act. It was urged that Article 25 of the Constitution guaranteed to all persons the right to profess, practice and propagate his religion, subject only to restrictions imposed by the State on the grounds mentioned in Article 25(2) of the Constitution. The right to profess and propagate particular religion carried with it the right to take all steps to conserve the tenets of that religion. Viewed from this angle, the publication of the leaflet (Ext. 3) according to the learned Counsel amounted hereby a step taken by a Muslim Divine to protect the tenets of Islam from the supposed effect on them by the spread of communism. There may be some substance in this plea, but on the view which I have taken in regard to the plea that the leaflet did not come within the mischief of section 123(3) of the Act, I do not think that it is necessary to pursue this point.

10. Before dealing with the points raised as aforesaid, the provisions of section 123(3) of the Act as it stood before its amendment by Act 40 of 1961 and as it stands after the amendments may be set out. The section as it stood before the amendment was as follows:

"Sec. 123. The following shall be deemed to be corrupt practices for the purposes of this Act:

(3) The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election."

The section as it stands after the amendment reads as under:

"———(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain

from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, National Symbols such as the National flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

It is apparent that before the amendment of section 123(3), the language employed therein banned any systematic appeal to vote or refrain from voting on grounds of religion etc., but by the amendment while the word "systematic" has been dropped the purpose of the appeal has been narrowed down as confined to appeal to vote or refrain from voting for any person on the ground of his religion etc. The word "his" in the first part of section 123(3) before the words "religion race, caste, etc." is very significant, and it must be held that the appeal contemplated by the section is an appeal to vote or refrain from voting for any person on the ground of his religion etc., in other words, the word "his" clearly refers to something personal to the candidate for whom or against whom the appeal was being made. Under section 123(3) as it stood before the amendment the only limitation on the appeal to vote or refrain from voting was that it had to be shown that the appeal was in the nature of a systematic appeal; but so long as a systematic appeal to vote or refrain from voting on grounds of religion etc., was made it did not matter whether the candidate concerned professed that particular religion or belonged to that particular race, caste or community, in other words, all systematic appeal made to the electorate on ground of religion etc., were banned. The position, however, is different after the amendment. In order that the appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting may come within the mischief of this section, it must be an appeal to vote or refrain from voting for or against the particular person on the grounds of that particular person's religion, race, caste, community or language. It is, therefore, plain that this part of the section requires the appeal to vote or refrain from voting for a candidate at the election on some ground which was personal to the candidate concerned like his religion, race, caste etc. A mere general appeal to vote or refrain from voting made to the electorate without reference to the candidate or candidates concerned and not banned on the candidate's religion, race, community etc., cannot be held to be a corrupt practice under section 123(3) as it stands at present. The word "his", it is manifest, does not attach to the voter or to the person who makes the appeal. This view in my opinion, finds support from at least two decisions of the Supreme Court. The first one is the decision in *Kullar Singh v. Mukhtiar Singh* (A.I.R. 1965 S.C. 141). It appears from the decision that their lordship proceeded on the footing that the word "his" in the first part of section 123(3) attached to the candidate for whom or the candidate against whom the appeal had been made. It was on that footing that it was held that a corrupt practice under section 123(3) can be said to have been committed by a candidate by appealing to voters to vote for him on the ground of his religion, even though the rival candidate may belong to the same religion. The second case of the Supreme Court which throws light on the point in the case of *Jagdev Singh Sidhanti versus Prasto Singh Daulte and others* (A.I.R. 1965 Supreme Court 193). That was case of appeal to voters to vote or refrain from voting on the ground of candidate's language. It was held that it was only when the electorate was asked to vote or to refrain from voting because of the particular language of the candidate that a corrupt practice may be deemed to have been committed. In paragraph 26 of the judgment the true meaning of the expression "on the ground of his language" came up for consideration. In that connection their Lordship observed as follows:

"The corrupt practice defined by cl.(3) of s. 123 is committed when an appeal is made either to vote or refrain from voting on the ground of the candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of s. 100 read with s. 123(3). Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that corrupt practice may be deemed to be committed".

In the passage extracted above if the word "language" is substituted by the word "religion" the true meaning of the expression "on the ground of his religion" as occurring in the first part of section 123(3) become clear. It follows that general appeal of the type to the Muslim voters to refrain from voting for the Communist candidates on the ground of religion as can be said to be impliedly contained in the contents of Ext. 3 is not sufficient to bring the said leaflet within the mischief of the first part of section 123(3) of the Act. It has not been suggested that the contents of Ext. 3 amounted to an appeal to refrain from voting for the Communist candidates on the ground of their religion. Indeed on the contents no such suggestion could be made. It also could not be



suggested that there was anything anywhere in the leaflet which could be construed as an appeal to vote for the respondent on the ground of his religion. It has already been mentioned above that the Communist candidate for election to the Parliament was a Hindu and the only Communist candidate for election from one of the Assembly Constituencies was a Muslim. There is nothing in the leaflet which can go to suggest that any appeal had been made therein to refrain from voting for Shri Shakti Kant Sahay, the Communist candidate on the ground of his religion. For all these reasons, I am clearly of the opinion, that the leaflet (Ext. 3) does not come within the mischief of section 123(3) of the Act. All the three cases, namely, (1) Nazmul Haque v. Amjad Ali and others (18 Election Law Reports 253), (2) Rustom Satin v. Dr. Sampoorananand and others (20 Election Law Reports 221) and (3) Shubash Deogam v. Ram Narain Prasad (A.I.R. 1960 Supreme Court 142) on which reliance was placed on behalf of the petitioner are cases decided on the terms of section 123(3) as it stood before its amendment in the year 1961. I have already discussed above, the significant difference in the terms of section 123(3) before and after the amendment. I am, therefore, of the view that none of the aforesaid three decisions are of any assistance to the petitioner in the present case.

11. There is also no substance in the plea that the contents of Ext. 3 come within the mischief of section 123(3) of the Act. The promotion of or attempt to promote feelings of enmity or hatred between different classes of the citizens of India on ground of religion etc., by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate is deemed to be a corrupt practice under section 123(3A) of the Act. It has already been pointed out above that the contents of the leaflets amounted to a severe condemnation of the principles of communism on the ground that its principles and the economic system which it enjoined were against the tenets of Islam. In short, the leaflet may be said to amount to a criticism of communism as practiced by the Communist Party from the point of view of a follower of Islam. According to the learned counsel for the petitioner, Ext. 3 offended against section 123(3A) because it promoted feelings of enmity and hatred between those citizens of India who follow the tenets of Islam and those who by reason of being members of the Communist Party were against these Islamic tenets; the latter according to him substituted a "clause" within the meaning of section 123(3A) of the Act. I am unable to uphold this contention. It is different to equate a political party like the Communist Party with the non-Muslim citizens of India. It is well known that its members are adherents of different faiths and it includes both Muslims and non-Muslims. Merely because a person is a member of the Communist Party it does not follow that he is necessarily against Islam. It is difficult therefore, to accept the contention that the members of the Communist Party constituted a "clause" within the meaning of section 123(3A) of the Act. Moreover there is hardly any room for suggesting that the contents of the leaflet amount to promoting feelings of enmity and hatred between any two classes on the ground of religion. It is significant to note that the leaflet speaks of what is personal to those who are communists; it does not speak of any anti-Islamic activity on their part or of any interference on their part with Islamic religious practices. In substance, the leaflet as pointed out earlier brings out the difference in the respective approaches of the Communist Party and of a follower of Islam to the various problems in the country. It may be said that there is nothing in the leaflet which can be said to offend a Communist because after all it more or less correctly represents the view point of a Communist, or of the Communist Party. For all these reasons, I am satisfied that the leaflet in question does not come within the mischief of section 123(3A) of the Act.

12. On the question whether the respondent, as alleged, in paragraph 12 and 13 of the election petition, got the offending leaflets including Ext. 3 printed and published, there is, in my opinion, no satisfactory evidence. In support of his case the petitioner has examined P. W. 2, a Compositor of Madhukar Press. He has also relied on some circumstances which according to the learned counsel for the petitioner supports the case that the respondent had got the offending leaflets printed and published. So far as P.W. 2 is concerned, it is, no doubt, true that he has stated in his evidence that the respondent himself had come to the press on 20th January, 1967, at about 5.30 p.m. along with one Maulvi Mahammad Manzoor Alam, the admitted author and writer of the manuscripts [Ext. 3 and 3(a)] and had paid into the hands of the aforesaid Maulvi Mahammad Manzoor Alam some money for payment towards the printing charges. The truth of the aforesaid statement has been categorically denied by the respondent who has figured as P.W. 8. The respondent has denied to have even gone to Madhukar

Press either alone or in the company of the aforesaid Maulvi Mohammad Manzoor Alam, as alleged, or otherwise. He has also denied to have ever paid anything towards printing charges of any leaflet printed as Madhukar Press. I am, however, of the opinion, that the statement as made by P.W. 2 is not quite consistent with the circumstances and the probabilities of the case, and, accordingly, I am inclined to accept the denial of the respondent to the effect that he had nothing to do with the printing or publication of the leaflets in question. In the first place, it may be mentioned that it is clear from the evidence of P.W. 2 himself that Maulvi Mohammad Manzoor Alam was an old customer of the press and was thus known to the press for long. It also appears from his evidence that on 18th January, 1967, when Ext. 3 was given for printing, Maulvi Mohammad Manzoor Alam had come alone or at least was not accompanied by the respondent. It further appears from his evidence that it was Maulvi Mohammad Manzoor Alam, who had placed the orders for printing and paid the printing charges. It was he who had given delivery of the leaflets which were in his hand and had been signed by him. In the circumstances, there appears to be no good reason why Maulvi Mohammad Manzoor Alam will be accompanied by the respondent on the former's second visit to the press, at 5-30 p.m., on the 20th January, 1967, when according to the evidence of P.W. 2 delivery was to be taken of the printed copies of Ext. 3 and orders for printing Ext. 3(a) had to be placed. It also appears highly improbable that if respondent was himself present, as is alleged, on behalf of the petitioner, the signature of Maulvi Mohammad Manzoor Alam would have been attested by Barho Ram and not by the respondent himself. Further on the evidence of R.Ws. 3, 4, 5 and 8 taken along with Exts. B, C and C/1, there can be no doubt that as soon as the respondent and other prominent members of his party came to know about the existence of the offending leaflets, they got a pamphlet printed and issued repudiating all connection with the leaflets or with its author and warning every one concerned that neither the respondent nor the Congress Party had connection with the leaflets or had anything to do with Maulvi Mohammad Manzoor Alam. It was stated in the said pamphlet of which the manuscript has been proved and marked as Ext. B and the printed copies as Exts. C and C/1 that some of the parties which were opposing the Congress in the election had got the leaflets printed and published with a view to spread confusion amongst the supporters of the Congress and that neither the Congress candidate nor the Congress Committee had any connection whatsoever with Maulvi Mohammad Manzoor Alam who was an irresponsible person. The fact that a regular repudiation was made of the leaflets in question by and on behalf of the respondent, in my opinion, clearly shows that the leaflets in question had not been got printed by the respondent or with his consent or knowledge. It appears that the repudiation or the contradiction spoken of about was issued forthwith, that is, immediately after the respondent had come to know about the existence of the offending leaflets. On behalf of the petitioner the Manager and Publisher of 'Ranchi Express', a Weekly paper published from Ranchi has been examined as P.W. 1. On his evidence the issue dated 12th February, 1967, of that paper has been marked as Ext. 1 for the petitioner. On the very first page of that issue portions from Exts. 3 and 3(a) as also from another leaflet displaying the Congress symbol of two yoked bullocks was published. The case of the respondent is that when he and his party men came to learn about the existence of the offending leaflets from the issue of Ranchi Express dated 12th February, 1967, which showed the Congress symbol on the face of it, it was decided to immediately issue a repudiation that the Congress Party or the Congress candidates had no concern with the leaflets of which the extracts had been published by 'Ranchi Express' as aforesaid. This part of the respondent's case is fully supported from the evidence of R.W. 3, 4, 5 and 8. Nothing has been elicited in their cross-examination which could go to discredit their testimony. The fact that a contradiction or repudiation was issued is established beyond doubt by Exts. B and Exts. C and C/1. The contradiction was issued under the signatures of Ram Narain Prasad, the President of the Mandal Congress Committee, Biridih (R.W. 4), Raghunandan Ram, M.L.A. (R.W. 5) and the respondent himself (R.W. 8). The issuing of the contradiction and the existence thereof, in my opinion, is wholly inconsistent that the respondent having anything to do with the printing or publication of the offending leaflets. It is also note worthy that whereas the total Muslim population of Giridih Subdivision as shown in the Census Report of 1961 stands at 1, 21, 932, the respondent if he was really the person responsible for getting the offending leaflets printed, would have got only one thousand copies of Exts. 3 and 3(a) printed. On the other hand, it appears that five thousand copies of the contradiction (Ext. B) were got printed for distribution (*vide* evidence of R.W. 3 and also the endorsement on the back of Ext. B). The number of valid votes polled by the 4 Parliamentary Candidate came to 1,99,083; the total population of Giridih Sub-Division being according to the aforesaid Census Report, 8,58,239. Thus, nearly 14 per cent of

the total population were Muslim. It is inconceivable that only one thousand copies would have been got printed, if really the respondent was at the back of it because one thousand copies would have hardly served the requirement of an effective propaganda. This circumstance as well, in my opinion, militates against the case of the petitioner that the respondent had got the offending leaflets printed and published. Besides the above factors there are certain materials in the evidence of P.W. 2 himself which go to show that the respondent had not accompanied Maulvi Mohammad Manzoor Alam to the Madhukar Press on 20th of January, 1967. P.W. 2 has stated that on 20th January, 1967, when the second manuscript, namely, Ext. 3(a) was given for printing and when according to his evidence, the respondent was present, there were only four persons including himself at the Manager's table. Now it is clear from Ext. 3(a) itself that besides Maulvi Mohammad Manzoor Alam, the two persons who identified his signature as also his writing placing orders for printing of the said manuscript must have been there, the third man being Maulvi Mohammad Manzoor Alam himself. If there were only four persons including P.W. 2 at the Manager's table at the time, the question of the respondent being present is clearly ruled out. It was, however, urged on behalf of the petitioner that the aforesaid statement of P.W. 2 did by no means show that there only four persons including himself in the room and it was suggested that the respondent may not have been at the Manager's table, but that did not mean that he was not in the room either. There is no substance in this plea. It is apparent from the evidence of P.W. 2 himself that there is only one room in which the Manager as well as he did their respective work. It is unreasonable to suppose that the respondent would not sit away from the Manager's table, if he was at all there, as alleged on behalf of the petitioner. On the aforesaid statement of P.W. 2 which appears to have been made in an unguarded moment, it is clear that the presence of the respondent at the place and at the time as alleged on behalf of the petitioner is disproved. On the evidence of P.W. 2 no question of having noticed Maulvi Mohammad Manzoor Alam taking any money from the respondent for payment to the press appears to arise. He has stated that at the time when the second manuscript, namely, Ext. 3(a) was handed over for printing, he was called by the Manager to give delivery of the printed copies of Ext. 3. He has further stated that he did not stay at the Manager's table after delivery was done. Indeed, he has admitted that he was not in a position to state whether the Manager did any writing on the second manuscript or not. On the aforesaid statement, his evidence that he had seen Maulvi Mohammad Manzoor Alam paying Rs. 12 on 20th January, 1967, cannot be accepted, and it is difficult in the circumstances to accept his testimony that he ever saw any payment being made by Maulvi Mohammad Manzoor Alam on 20th January, 1967, as stated by him and thus his having seen Manzoor Alam taking any money from the respondent does not arise. It may be noted that the best evidence of the alleged payment has been withheld. P.W. 2 has admitted that the press maintains counter-foils of cash memos and account of income and expenditure. None of these documents were either called for or produced. Further, there are certain suspicious circumstances relating to the printing of Exts. 3 and 3(a). Both Exts. 3 and 3(a) appear to be dated 20th January, 1967, yet the endorsement in the hand of Maulvi Mohammad Alam recording the order for printing one thousand copies of Ext. 3 is dated 18th January, 1967. Even the Manager's writing on the back of Ext. 3(b) shows that the manuscript was handed over on 19th January, 1967 and the delivery of the one thousand printed copies was to be made by 2 P.M. on 20th January, 1967. Curiously on Ext. 3(a) though endorsement as to the order for printing in the hand of Maulvi Mohammad Manzoor Alam is dated 20th January, 1967, no date at all has been mentioned in the writings alleged to be in the hand of the Manager of the press and proved as Ext. 3(c) showing either the date on which the order was placed or the date on which the delivery was promised. No declaration in regard to any of the manuscripts, namely Exts. 3 and 3(a) as required under section 127(A) of the Act has been produced nor there is any evidence to show that any of the identifying witnesses were known to the printer. No copy of the leaflet printed appears to have been sent to the appropriate authority. Yet, another circumstance to which reference may be made is that numerous spelling mistakes have been found in the manuscript Exts. 3 and 3(a). Such mistakes it appears were noticed by either the correspondent of Ranchi Express or its Printer or publisher. This is apparent from the endorsement which has been made in the issue of Ranchi Express dated 12th February, 1967 (Ext. 1) to the effect that from the spelling mistakes it appears that the manuscripts had been written by some half educated person. Surely, if the respondent was responsible for the leaflets, as is alleged on behalf of the petitioner, such mistakes would not have been allowed to continue in the manuscripts. Admittedly, the respondent is a qualified medical practitioner and is an advanced person. In view of the aforesaid discussion, it

must be held that the petitioner has not been able to establish that the respondent had anything to do with the printing or publishing of the leaflets. On behalf of the petitioner, however, certain circumstances were relied upon and it was urged that in view of those circumstances, it must be held that the petitioner had got the offending leaflets printed and published as alleged. The first circumstances may be easily disposed of. It was argued that if the leaflets in question, as admitted, were in existence, the only person who could be interested in getting such leaflets proved was the respondent, because of the three Muslim candidates at the election, two for the Assembly and the respondent for the Parliament, one was a Communist and the other was more or less a dummy. In the first place, there is no satisfactory evidence on the record to show that Jamaluddin who was a candidate from Girdih Assembly Constituency for election to the Assembly was dummy candidate. In the second place, there is no reason to suppose that the respondent who was a candidate of the Congress Party, depending for his election on Congress support, could have compromised his position by getting such leaflets as are Annexures A, B, and C to the election petition printed. There is thus no substance in the first circumstances put forward on behalf of the petitioner. The other circumstances on which great stress was laid on behalf of the petitioner is that Maulvi Mahammad Manzoor Alam appears to have been identified in both Exts. 3 and 3(a) by persons who were admittedly polling agents of the respondent. The case of the petitioner is that in Ext. 3 Maulvi Mahammad Manzoor Alam was identified by two persons, one of whom was Sheikh Hamid, a polling agent of the respondent. Likewise, of the two persons who identified him in regard to Ext. 3(a), Barho Ram was a polling agent of the respondent.

13. In regard to the alleged identification by Barho Ram, one of the polling agents of the respondents, on the back of Ext. 3(a), neither P.W. 12 nor P.W. 13, the only two witnesses examined to prove the said writing on the back of Ext. 3(a) as being in the hand of Barho Ram, have been able to satisfactorily prove the same. P.W. 12, indeed, admitted that the alleged signature of Barho Ram on the back of the Ext. 3(a) and his admitted signature on Ext. 6(a), the appointment form for polling agents were in the hand of two different persons. P.W. 13 it is true, at first identified the alleged writings, marked Ext. 5(c) on the back of Ext. 3(a) as writings in the hand of Barho Ram, but later in his cross-examination he showed a complete ignorance about the writings of Barho Ram by stating that similar writing on the back of Ext. 3, which according to the petitioner was in the hand of Sheikh Hamid, the other polling agent was in the hand of Barho Ram. This statement alone, in my opinion, makes P.W. 13 an incompetent witness to prove the identity of the writings of Barho Ram. It is also true that he has produced from his custody a receipt book which according to his evidence contained signatures of Barho Ram. The custody of the receipt book with this witness has, however, remained unexplained. According to his own statement the cash and account books and other registers relating to the affairs of the Multipurpose Cooperative Society at Dumarijore, of which he and Barho Ram were the President and the Secretary respectively during the period 1962 to April 1966, were still with Barho Ram, but curiously the particular receipt book which he has produced and in which certain signatures of Barho Ram were marked as Ext. 3 series continued in his custody. In view of the circumstances as also in view of his statement made in course of his cross-examination, referred to above, I am not prepared to place any reliance on this witness. It may also be mentioned that, though according to the petitioner the complicity of the respondent in the printing and publication of the offending leaflet was at least indirectly established by the fact that besides other persons, two of the polling agents of the respondent had identified Maulvi Mahammad Manzoor Alam at the press in connection with the printing of the leaflets in question, yet no attempt was made to get the identity of the signatures on Ext. 6 and 6(a), the two polling agent appointment forms, with the alleged signatures of Sheikh Hamid and Barho Ram on the back of Ext. 3 and 3(a). It must, therefore, be held that the petitioner has failed to establish that Ext. 5(c), as it appeared on the back of Ext. 3(a) was in the hand of Barho Ram, one of the polling agent of the respondent.

14. In regard to the alleged signature and writing on the back of Ext. 5 being in the hand of Sheikh Hamid, reliance was placed on the evidence of P.Ws. 10 and 19 as corroborated by the evidence of P.W. 2. In my opinion, the evidence of P.W. 10 read, as a whole, does not show that he can be said to be acquainted with Sheikh Hamid's handwriting. On his own statement, he had seen Sheikh Hamid putting his signature on Ext. 5 at the time when the respondent had appointed Sheikh Hamid as his polling agent. This witness has admitted that he had never seen Sheikh Hamid writing anything or putting his signature anywhere before and after the date on which the polling agent appointment form



was drawn up. In the circumstances, it is difficult to hold that P.W. 10 can be said to be acquainted with the handwriting of Sheikh Hamid so as to make him a competent witness to establish the identity of the alleged writing on the back of Ext. 3. P.W. 19 has not spoken a word about Ext. 5(b), the alleged writing on the back of Ext. 3 being in the hand of Sheikh Hamid. He has, no doubt, established his competence by proving as many as fourteen signatures of Sheikh Hamid in certain registers of Jhaalakdiha Multipurpose Cooperative Society of which he happened to be the Secretary. But no attempt has been made to establish any identity between those signatures and the signature in Ext. 5(b). Learned Counsel for the petitioner submitted that the proved signatures of Sheikh Hamid (Ext. 9 series) were there to enable the Court to compare them with the purported signature of Sheikh Hamid on the back of Ext. 3 and he urged that on a comparison, it would appear that the signature on the back of Ext. 3 tallied with the proved signature (Ext. 9 series). Though it is generally hazardous to come to any definite conclusion on the question of identity of writing or signature on a rough and ready comparison of the disputed writing with proved ones, I have compared the signatures (Ext. 9 series) with the one contained in Ext. 5(b) and appearing on the back of Ext. 3 and, in my opinion, the dissimilarities between the two are numerous though it cannot be said that there are no similarities, the former, in my opinion, are more in number than the latter and thus on a visual comparison, I am of the opinion, that it cannot be said that they tally. I have already commented above on the failure of the petitioner to get the admitted writings of Sheikh Hamid or that of Barho Ram compared with the disputed ones. The mere fact that no suggestion was made to any of the petitioner's witnesses that the signatures in question were forgeries did not, in my opinion, in the circumstances of this case and in view of the fact that the burden lay squarely on the petitioner to establish the identity, absolve him from getting the identity of the signature or that of the writing compared by an Expert. No help is available on this question from the evidence of P.W. 2 either. All that he has stated is that he had seen the identifiers of Maulvi Muhammad Manzoor Alam once or twice in Giridih and that at Popular Pharmacy, of which the attending physician was the respondent. This statement does not imply that Sheikh Hamid or Barho Ram, the polling agents of the respondent were, in fact, the persons who had identified Maulvi Muhammad Manzoor Alam. In view of what has been stated in the leaflet issued by and on behalf of the respondent repudiation all connections with Maulvi Muhammad Manzoor Alam either with him or with the Congress Party and in view of the contents of the said leaflets (Exts. B, C and C/1), the chances of getting hold of someone, who was prepared to write or sign as Sheikh Hamid or as Barho Ram cannot be altogether excluded. In the circumstances and for the reasons, discussed above, I am of the opinion, that the petitioner has miserably failed to establish that the writings of the signatures contained in and marked as Exts. 5(b) and 5(c) on the back of Exts. 3 and respectively were in the hand of Sheikh Hamid and Barho Ram, who were two of the polling agents of the respondent. Those writing on the back of Exts. 3 and 3(a), therefore, are of no assistance to the petitioner. Further, even if it were assumed that Exts. 5(b) and 5(c) were, in fact, in the hands of Sheikh Hamid and Barho Ram respectively and even if the allegation that the printing and publishing of the offending leaflets was got done by the respondent through his agent or workers could be said to be implied in the specific allegation made in paragraph 15 of the election petition to the effect that the respondent had put the offending leaflets printed and published, I am satisfied that on the facts of this case they are of little advantage to the petitioner. It will be seen that both Sheikh Hamid as well as Barho Ram came to be appointed as respondent's polling agents on 19th February, 1967 (Vide Exts. 6 and 6/a). The leaflets in question (Exts. 3 and 3/a) were handed over for printing by Maulvi Muhammad Manzoor Alam on the 18th and 20th January, 1967 on which dates it has been alleged that Maulvi Muhammad Manzoor Alam, the writer of the manuscripts, was identified by Sheikh Hamid and Barho Ram. There is no evidence on the record of Barho Ram having worked for the respondent in any other capacity than as a polling agent. Obviously, he could not be described as a polling agent of the respondent before he was so appointed on 19th February, 1967. In regard to Sheikh Hamid, however, it appears from the evidence of P.W. 19 that he had seen Sheikh distributing leaflets at Jhaalakdiha 12 to 13 days before the date of the poll, the poll being on 19th February, 1967 (vide evidence of P.W. 10). The earliest dates on which Sheikh Hamid can be said to have worked for the respondent was the 6th tember, 1967 of the value of Rs. 3112/- for import of copper, zinc, tin, lead and before that date. It follows that on 18th and 20th January, 1967 neither Sheikh Hamid nor Barho Ram were agents or workers of the respondent, in fact or in law. In such circumstances, the respondent cannot be liable for any act or conduct on the part of Sheikh Hamid and Barho Ram. In view of the aforesaid



discussion, I have no hesitation in coming to the conclusion that there is no merit in the direct or in the circumstantial evidence on which reliance was placed on behalf of the petitioner for holding that the respondent or his agents and workers had got the offending leaflets printed and published. On the other hand, the circumstances and evidence, referred to on behalf of the respondent and discussed above, show beyond doubts that the respondent had nothing to do with the printing or publishing of the offending leaflets.

15. The third point, as stated in paragraph 6 above, may now be taken up for consideration. The factual existence of the leaflet in question (Ext. 3) has not been disputed. Indeed, in view of Ext. 1, the issue of "Ranchi Express" dated 12th February, 1967, Ext. 2, a letter from a correspondent of "Ranchi Express". Ext. 2(a), news report of the correspondent and the several printed copies of the leaflet including Exts. 4 and 4(a) which were either produced by one witness or another, examined on behalf of the petitioner or were sent to "Ranchi Express" by its correspondent taken in conjunction with the evidence of P.W. 1 and the evidence of the issue of the repudiation by and on behalf of the respondent, the existence of the leaflet could not be disputed. But in view of what has been round above that the respondent had nothing to do with the printing or publishing of the offending leaflets including Ext. 3, the distribution of the leaflet by or on behalf of the respondent or the reading out of its contents by him or by his agents or workers was highly improbable. If the respondent had not done anything in bringing the leaflet into existence, it was extremely unlikely that he would have taken any part in distributing the same. Apart from this circumstances, there are various other circumstances which make the case of distribution of the leaflet in question by and on behalf of the respondent highly improbable. The first circumstance to which reference may be made is the total absence of any contemporaneous report of complaint against the alleged distribution of the offending leaflets or against reading out or explaining their contents at several places and on various dates as alleged in the election petition. There is evidence on the record that if not the petitioner at least his important workers like Thakur Saheb and others had been informed about the distribution of the leaflets (*vide* the evidence of P.Ws. 3, 17, 21 and 25). It is impossible to believe that if, in fact, the distribution as alleged had been done, no information would have been received by the petitioner himself. It is not without significance that neither the petitioner nor his election agent Prahlad Das Bhasin nor Thakur Saheb, who on the evidence on record, has figured as one of the principal workers for the petitioner have been examined in support of the case of distribution etc. It cannot be supposed that the petitioner had not gone round the constituency in the capacity of a candidate for election and thus he was indeed a very competent witness to speak about the alleged distribution and in support of his case in regard to the same. In any case, the petitioner's election agent and his important worker, namely, Thakur Saheb must have gone round the constituency several times and it is rather curious that they have been kept away from the witness box. In the circumstances, it is legitimate to infer that they have been deliberately kept away because they were not prepared to support a false case as set up in the election petition. In regard to the distribution etc. of the offending leaflet. Their omission to complain to the proper authorities about the alleged distribution of the offending leaflets or about the oral appeals etc. alleged to have been made on the lines of the contents of the leaflets and their failure to examine themselves are very cogent circumstances against the case of distribution. Yet, another circumstances is that only one thousand copies of the offending leaflet were got printed. The total population of the constituency was nearly 3 lakhs. out of which the Muslims were nearly 14 per cent (*vide* Census Report of 1961). Evidence on the record suggests that there was rather indiscriminate distribution in the sense that it was not confined to Muslim voters only. Indeed not one Muslim voter has been examined for the petitioner and no printed copies of leaflets have been produced from the custody of any Muslim voter. The election petition itself shows that nearly 2 lakhs had polled at the election. It is obvious that mere one thousand copies would never have sufficed for even a limited distribution amongst the electorate, and thus the very number of the printed copies of the leaflet militates against the case of distribution as alleged. It rather suggests a mere mischief value as the motive for the printing of the leaflet. It is not without significance that as many as five thousand copies of Ext. B—the notice repudiating all connection of the Congree candidate or the Congress Party with Maulvi Mahammad Manzoor Alam or with the leaflets issued in his name, had been got printed by the respondent and his party men. It is manifest that if the purpose for getting the offending leaflet printed was to use it in the election campaign of the respondent and for the furtherance of his election, it is inconceivable that he would have got only one thousand copies thereof printed. Another

circumstances to which reference may be made arises from the fact that though the respondent was a Muslim, all his running mates were non-Muslim. It is well known that Parliamentary candidates, by and large, campaign along with the candidates of their party for election to the Assembly; their symbols are the same and polling is held simultaneously. In the circumstances placed as the respondent was, it was extremely unlikely that he would be a party to a campaign in which a leaflet with a communal bias and approach would be distributed. Any such activity on his part was bound to antagonise his running mates and thus damage his own interest. To the above circumstances, the following may be added. The respondent, it is evident on the evidence, is by profession a doctor, having his patients in all communities, Muslims and non-Muslims. He was fighting the election on the Congress ticket. The Congress is a party professes a non-communal approach. Keeping these facts in mind, it appears to me that the distribution of the offending leaflet by and on behalf of the respondent was not only bound to tarnish the image of the Congress whom he represented it was further bound to hurt the feelings of at least his non-Muslim patients. Thus the distribution of the leaflet was a conduct on his part against his own interest which cannot be readily supposed. I am clearly of the opinion that the circumstances enumerated above make the case of distribution etc. as set up in the election petition by and on behalf of the respondent highly improbable. The evidence adduced by the petitioner in support of this part of the case must be considered in the light of the circumstances discussed above.

16. On the particulars mentioned in paragraph 19 of the election petition and on those mentioned in the amplification petition, it appears that the case of the petitioner is that out of the meetings held at eleven places within the constituency on different dates, the respondent was present and took part in distributing the leaflets and in explaining their contents and in making oral appeals on their lines at seven of those meetings, namely at Satgawan on the 12th February, 1967, at Barho and Dumal on the 13th February, 1967, at Dhanwar on the 14th February, 1967, at Jamua on the 16th February, 1967 and at Giridih and Pachamba on the 18th February, 1967. No evidence has been adduced in regard to the alleged meetings at Barho and Pachamba. No evidence about the distribution of the offending leaflet (Ext. 3) at Satgawan has been adduced. Neither P.W. 11 nor P.W. had seen Exts. 4 and 4(a), two of the printed copies of Ext. 3. They do not speak about any distribution at Satgawan. Whatever distribution of which he had spoken of was at Basodih, a place not mentioned in the election petition. In regard to Dumri the witnesses are P.Ws. 3 and 23. P.W. 3, no doubt speaks about the distribution of Ext. 4, the printed copy of Ext. 3, but he does not speak about any distribution by the respondent. He speaks only about the distribution by Maulvi Mohammad Manzoor Alam, a fact which does not find mention in the particulars given in paragraph 19 of the election petition. It may be noted that P.W. 3 does not speak of any oral appeal on the ground of religion whether by respondent or by Maulvi Mohammad Manzoor Alam. P.W. 21 speaks of distribution at Bermo turning by the respondent and to that extent he contradicts P.W. 3. This witness speaks of a leaflet in the nature of a notice for holding the meeting itself and according to him, none of the local Congress leaders were present at the meeting. He also does not speak of any oral appeal. Neither of these two witnesses have produced any leaflet though they claimed to have been present at the meeting where the leaflet was distributed. Their evidence, on the whole, does not inspire confidence and I am not prepared to hold on their evidence that there was any distribution at Dumri as alleged. In regard to distribution at Dhanwar, the only witness examined is P.W. 17. From the description which he has given of the respondent (R.W. 8), I am convinced that this witness was not present at the alleged meeting. It is true that he had produced Ext. 1/1 (material exhibit) which is a printed copy of the leaflet. But I am not prepared to hold that on that ground alone the case of distribution as stated by him at Dhanwar must be accepted. The fact that some of the witnesses examined on behalf of the petitioner have produced the printed copies of the leaflet does not, in my opinion, necessarily lead to the conclusion that the distribution as alleged in the election petition was true. I have already held above that the existence of the leaflet cannot be disputed. It may be that the person who was responsible for bringing the leaflet into existence had distributed its printed copies at certain places. In the circumstances, the fact that printed copies of the leaflet in question have been produced by some of the witnesses examined on behalf of the petitioner, can be of no advantage to him. The distribution at Dhanwar, accordingly, cannot be said to have been established. In regard to the distribution at Jamua, the witnesses are P.Ws. 16 and 22. It was urged on behalf of the petitioner that evidence of P.W. 16 should be accepted because he has produced a printed copy of the leaflet, (Material Ext. I) as he could not have got the same without the

alleged distribution. I have already pointed out above that this argument is not tenable. This witness is a Mukhia. It is curious that though he claims to have informed P.Ws. 22 and 25, he did not inform the authorities about the distribution witnessed by him. In the circumstances, P.W. 16 and P.W. 22 have not spoken about any meeting at Jamua. His evidence is to the effect that the place where the meeting was held falls in village Khurd Magha, but there is no allegation in election petition about any meeting at Khurd Magha. The distribution at Jamua, therefore, must also be discredited. In regard to the alleged distribution at Giridih, the relevant witnesses are P.Ws. 7, 10 and 18; P.Ws. 7 and 18 have spoken about a meeting, where distribution was made at Giridih Chowk while P.W. 10 has spoken about a similar meeting at Karbala Road, P.W. 7 was cross-examined about the contents of Ext. 3. His answers show that he had no idea about the contents and that he had never read the same or received it. The only ground on which it was urged on behalf of the petitioner that his evidence should be accepted was that he had produced a printed copy of the leaflet. That ground as indicated already cannot be urged on the facts of this case as necessarily indicating distribution on the part of the respondent or his men. P.W. 10, a worker of the Jankranti Dal has been contradicted by P.W. 11 in regard to whether there was an open space on Karbala Road or not. According P.W. 10 there was an open space on the Karbala Road where the alleged meeting was held while according to P.W. 11, there was no such open space. P.W. 10 has not stated as to who was distributing the leaflet. It may also be pointed out that even though he was an active worker of Jankranti Dal, he did not report or complain against distribution to any local authority. Likewise, P.W. 18 has also admitted that he did not report about the distribution to any of the Communist candidate nor to anyone nor did he inform the Governmental authorities. The matter in which the distribution was made as deposed to by P.W. 18 is rather unconvincing. I am inclined to accept the evidence of R.W. 2 to the effect that the respondent was absent on 18th February, 1967, the date on which the meeting at Giridih was alleged to have taken place, from Giridih. According to his evidence, respondent had left Pachamba on 18th February, 1967 at 7 A. M. in his company and had come back at 11 P. M. in the night. The places which they visited together were Jamua, Nahurladih Ghatro and Parsabad. Nothing appears to have been elicited in his cross-examination to discredit his testimony. His personal diary which he produced the names of the several places which they visited on 18th February, 1967. He has been corroborated in this respect by R.W. 8. In regard to the distribution at Giridih, it was rightly pointed out on behalf of the respondent that full particulars like a meeting having been held at Karbala Road where Maulvi Mahammad Manzoor Alam had made an oral appeal or like distribution having taken place at Giridih Chowk have not been mentioned in the election petition. Strictly speaking the petitioner could not be heard to say that any such meetings were held either at Karbala Road or at Chowk Giridih. In the circumstances, there is no force in this contention that in order to meet the petitioner's case the respondent should have examined witnesses of Giridih Chowk and Karbala Road Giridih. On the other hand, if the petitioner had given the necessary particulars, the respondent could have examined witnesses and given facts on the record to show that there was no distribution at those places at all. The evidence as to distribution etc. at Giridih alleged is, therefore, not at all satisfactory. Now as to places where the election agent of the respondent is alleged to have distributed the leaflet and made oral speeches. Such places are four in number, namely, at Bengabad on the 4th February, 1967, at Chaphuari on the 5th February, 1967, at Jhalakdiha on the 6th February, 1967 and at Maheshmunda on the 12th February, 1967. In regard to the case of distribution at Bengabad and at Chaphuari, the witnesses are P.Ws. 5 and 6 and P.W. 15. It appears from the evidence of P.W. 5 that he has no independent recollection of the size and contents of the leaflet alleged to have been distributed at Bengabad on the 4th February, 1967. He does not also say as to why he was at Bengabad on that day. P.W. 6 no doubt, is a resident of Bengabad, but his evidence, read as a whole, does not show the reason as to how he was able to recognize Mohiuddin Ahmad, the election agent of the respondent. According to P.W. 15, the meeting was held in village Murhari and not in Chaphadih. Indeed, the case of distribution of these two places was not pressed on behalf of the petitioner. In regard to distributors etc., at Jhalakdiha the witnesses are P.Ws. 19 and 24. P.W. 19 claims to have got a leaflet distributed by Mohiuddin Ahmad at Jhalakdiha. It however, appears that he never informed anybody about having seen Mohiuddin Ahmad distributing the leaflet and about his having received any such leaflet. It is curious how he was examined on behalf of the petitioner in support of the case of distribution etc. at Jhalakdiha. I am not prepared to place any reliance on his evidence. P.W. 24 has made certain statements in his evidence which clearly show that he has no regard for truth. This witness has stated that he was aged 35 years at the time of his deposition.

He claimed that he was a teacher in 1946-47. It follows, therefore, that he was aged only about 13 or 14 years in 1946-47. He has further claimed to have read upto the Matric standard at Mkatpur H. E. School, Giridih which school he claims to have left ten years before he went to join Kusumbha Adimjati Sewa Mandal Middle School. In other words, he had read upto the Matric standard by the year 1936 then upon his own statement, that he was only 35 years of age, he would be only 3 to 4 years of age. Further he has admitted that he was cultivating land at Lataki at his father-in-law have. Lataki is in Jamua P. S. and Jhalakdiha is in Bengabad P. S. At one place in his evidence he claimed to have gone to Jhalakdiha in June, 1965 and he stayed there for 1½ years. He, however, admits that he was doing cultivation work before he went to Jhalakdiha and was doing cultivation work even after he left Jhalakdiha. It appears from his evidence that he was at Jhalakdiha at election time as he was coaching some students in village Jhalakdiha privately appears to have been made only with a view to make himself competent to speak about the alleged distribution by Mohiuddin at Jhalakdiha. No reliance can be placed on P.W. 24. In regard to distribution etc., at Maheshmunda on the 12th February, 1967, the relevant witnesses are P.Ws. 4, and 20. P.W. 4 gave rather an unacceptable size of the leaflet in question and the substance which he gave about the contents of the leaflet do not also tally with them. P.W. 20 has admitted that he had never seen Mohiuddin Ahmad before. It was difficult for him to identify him. He further admits that he had talked to no one about his having attended the distribution at Maheshmunda? He has been considerably shaken in his cross-examination particularly in regard to his statement about the existence of houses of Muslims in front of the Mill of Musan Ram. His evidence does not inspire confidence at all. It follows that in support of the case of the distribution of the leaflet or in support of the case of holding any meetings at different places and on different dates, as alleged in the election petition and wherein the leaflet is alleged to have been read out and explained and wherein oral appeals were made on the lines of the contents of the leaflet, there is no satisfactory evidence. The evidence as adduced on behalf of the petitioner is wholly inconsistent with the circumstances referred to and discussed above. On the other hand, the evidence adduced on behalf of the respondent denying the truth of the distribution etc. appears to be consistent with the probabilities of the case, and, is, therefore, acceptable. It follows that it must be held that the petitioner has failed to establish his case as made out in the election petition in regard to distribution etc. of the leaflet in question. This point as well as accordingly decided against the petitioner.

17. There is practically no evidence in support of the petitioner's case that oral appeal were made at any place and on any date, either by the respondent or by his election agent or his workers on the lines of the offending leaflet, as alleged in the election petition. This part of the petitioner's case must also be rejected. There is also no evidence in support of the petitioner's case that any false statement was made at any time by the respondent, his agent and workers against the personal character and conduct of the other candidates. This part of the petitioner's case must also fail. Indeed, learned counsel for the petitioner did not address any argument in respect of either oral appeals or making of any false statement against the personal character and conduct of any candidate.

18. It follows from what has been discussed above that issue No. 14 must be decided against the petitioner and it must be held that it has not been established that the respondent or his election agent and workers with the consent of the respondent or his election agent had committed any corrupt practice as alleged in paragraphs 9 to 26 of the election petition. On the findings, the question of the result of the election having been materially affected, therefore, does not arise.

19. In the result, the petition is dismissed with costs. Hearing fee is addressed at Rs. 1000/-.

Sd./- S. B. N. SINHA,

PATNA HIGH COURT,

The 15th of May, 1968.



## ORDERS

*New Delhi, the 1st July 1968*

**S.O. 2548.**—Whereas the Election Commission is satisfied that Shri Dhananjoy Prasad Sinha of Mohalla Darsan Nagar, P.O. Chapra, District Saran (Bihar), a contesting candidate for election to the House of the People from Maharajganj constituency, has failed to lodge an account of his election expenses in the manner required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, after considering the representation made by the said candidate, the Election Commission is further satisfied that he has no good reason or justification for the failure.

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Dhananjoy Prasad Sinha to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-HP/7/67(39).]

*New Delhi, the 5th July 1968*

**S.O. 2549.**—Whereas the Election Commission is satisfied that Shri Rameshwar Prasad Verma, Assistant, Bhagalpur University, Bhagalpur-7 (Bihar) a contesting candidate for election to the House of the People from Jamui constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after the due notice has not given any reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Rameshwar Prasad Verma to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order

[No. BR-HP/30/67(41).]

By Order,

A. N. SEN, Secy.

## ORDER

*New Delhi, the 4th July 1968*

**S.O. 2550.**—Whereas the Election Commission is satisfied that Shri Irim Marhya Malaji, At Vasa, Post Talasari, Via Dahanu Road, Distt. Thana (Maharashtra) a contesting candidate for election to the House of the People from Dahanu constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate even after due notice has not given any good reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Irim Marhya Malaji to be disqualified for being chosen as, and for being, a member of either house of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this Order.

[No. MT-HP/10/67.].

By Order,

K. S. RAJAGOPALAN, Secy.



**MINISTRY OF HOME AFFAIRS***New Delhi, the 10th July 1968*

**S.O. 2551.**—Under Rule 3 of the Manipur Employees (Revision of pay) Rules, 1966, Order the President is pleased that the Government servants, working under the Government of Manipur, who opted for the retention of pre-revised scale of pay until they vacate their posts or cease to draw pay in that scale under Rule 8 of the Manipur Employees (Revision of Pay Rules) 1966 may be allowed to give fresh option. The revised option shall be exercisable within a period of 30 days from the date of publication of this notification in the official gazette.

[No. 1/69/67-HMT.]

R. C. JAIN, Dy. Secy.

**MINISTRY OF FINANCE**  
(Department of Economic Affairs)

*New Delhi, the 10th July 1968*

**S.O. 2552.**—Statement of the Affairs of the Reserve Bank of India, as on the 5th July, 1968

**BANKING DEPARTMENT**

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid Up . . . . .	5,00,00,000	Notes . . . . .	20,59,74,000
		Rupee Coin . . . . .	2,90,000
Reserve Fund . . . . .	80,00,00,000	Small Coin . . . . .	3,35,000
		Bills Purchased and Discounted:—	
National Agricultural Credit (Long Term Operations) Fund . . . . .	143,00,00,000	(a) Internal . . . . .	..
		(b) External . . . . .	..
		(c) Government Treasury Bills . . . . .	150,71,09,000
National Agricultural Credit (Stabilisation) Fund . . . . .	33,00,00,000	Balances Held Abroad* . . . . .	105,55,27,000
		Investments** . . . . .	298,54,70,000
		Loans and Advances to:—	
National Industrial Credit (Long Term Operations) Fund . . . . .	55,00,00,000	(i) Central Government . . . . .	..
		(ii) State Governments@ . . . . .	29,36,35,000
Deposits:—		Loans and Advances to:—	
(a) Government—		(i) Scheduled Commercial Banks† . . . . .	97,19,13,000
(i) Central Government . . . . .	55,22,56,000	(ii) State Co-operative Banks‡ . . . . .	145,37,95,000
(ii) State Governments . . . . .	14,30,59,000	(iii) Others . . . . .	3,33,40,000

Loans, Advances and Investments from National  
Agricultural Credit (Long Term Operations) Fund—

		(a) Loans and Advances to:—	
(b) Banks—		(i) State Governments	31,69,16,000
(i) Scheduled Commercial Banks	139,51,41,000	(ii) State Co-operative Banks	16,39,45,000
(ii) Scheduled State Co-operative Banks	7,68,84,000	(iii) Central Land Mortgage Banks	..
(iii) Non-Scheduled State Co-operative Banks	1,16,34,000	(b) Investment in Central Land Mortgage Bank Debentures	
(iv) Other Banks	18,75,000	Loans and Advances from National Agricultural Credit	
(c) Others	388,90,75,000	(Stabilisation) Fund	8,00,02,000
Bills Payable	26,67,26,000	Loans and Advances to State Co-operative Banks	6,11,20,000
Other Liabilities	26,23,10,000	Loans and Advances and Investments from National	
		Industrial Credit (Long Term Operations) Fund —	
		(a) Loans and Advances to the Development Banks	6,08,92,000
		(b) Investments in bonds/debentures issued by the	
		Development Bank	..
		Other Assets	56,86,97,000
Rupees	975,89,60,000	Rupees	975,83,60,000

\*Includes Cash Fixed Deposits and Short-term Securities.

\*\*Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund, and the National Industrial Credit (Long Term Operations) Fund.

§Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

||Includes Rs. 81,14,01,000 advanced to scheduled Commercial Banks against usance bills under section 17(4) (c) of the Reserve Bank of India Act.

|||Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 10th day of July, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934 for the week ended the 5th day of July, 1968

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	20,59,74,000		Gold Coin and Bullion:—		
Notes in circulation	3332,73,76,000		(a) Held in India	115,89,25,000	
Total Notes issued		3353,33,50,000	(b) Held outside India	..	
			Foreign Securities	206,42,00,000	
			TOTAL		322,31,25,000
			Rupee Coin		72,97,57,000
			Government of India Rupee Securities		2958,04,68,000
			Internal Bills of Exchange and other commercial paper		..
TOTAL LIABILITIES		3353,33,50,000	TOTAL ASSETS		3353,33,50,000

Dated the 10th day of July, 1968.

L. K. JHA,  
Governor.

[No. F.3(3)-BC/68.]

CORRIGENDUM

"In the Statement of the Affairs of the Reserve Bank of India, Banking Department as on the 7th June, 1968 published in the Gazette of India dated 22nd June 1968 at Part II—Section 3(ii) on pages 3050-3051, the figure of Rs. 155,03,49,000 appearing in the foot-note reading 'Includes Rs. 155,03,49,000 advanced to scheduled commercial banks against usance bills under section 17(4)(c) of the Reserve Bank of India Act, on page 3051 should be read as Rs. 101,03,49,000'."

*New Delhi, the 11th July 1968*

**S.O. 2553.**—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the New Bank of India Ltd., New Delhi, in respect of two immovable properties (consisting of land measuring 2200 square yards at Sultanwind Gate and 8710.34 square yards at Majitha Road) held by it in Amritsar, till the 18th July 1969.

[No. F. 15(20)-BC/68.]

**S.O. 2554.**—In pursuance of clause (c) of sub-section (1) of section 21 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India, hereby renominates Shri Jehangir R. J. Cama, Managing Director, Cama Motors (Private) Ltd., Ahmedabad to be a member of the Ahmedabad Local Board of the State Bank of India with effect from the 1st July, 1968.

[No. F. 8/100/68-SB.]

**S.O. 2555.**—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-clauses (i) and (ii) of clause (c) of sub-section (1) of section 10 of the said Act shall not apply to the Frontier Bank Ltd., New Delhi, till the 6th June 1969 or till the date of its conversion into a non banking company/winding up of its affairs, whichever is earlier, in so far as the said provisions prohibit its Chief Executive Officer from being the Managing Director of the Gola Private Ltd.

[No. F.15(14)-BC/68]

C. F. CHIEREATH, Under Secy.

# **OFFICE OF THE COLLECTOR OF CENTRAL EXCISE HYDERABAD DECCAN, ANDHRA PRADESH**

## **CENTRAL EXCISE**

*Hyderabad, the 27th May 1968*

**S.O. 2556.**—In exercise of the powers conferred on me by Rule 5 of the Central Excise Rules, 1944, I hereby authorise officers of and above the rank of Assistant Collectors of Central Excise to exercise the powers of Collector under sub-rule (1) of rule 52A of the Central Excise, Rules, 1944, within their respective jurisdiction and in relation to assesseees governed by Chapter VIIA to the said rules.

[No. 1/68.]

**S.O. 2557.**—In exercise of the powers conferred on me by Rule 5 of the Central Excise Rules, 1944, I hereby authorise officers of and above the rank of Assistant Collector of Central Excise to exercise the powers of Collectors under Rule 53 read with rule 173 G(4) of the said rules within their respective jurisdiction and in relation to assesseees governed by Chapter VIIA to the said rules.

[No. 2/68.]

*Hyderabad, the 13th June 1968*

**S.O. 2558.**—For the existing figures in Cols, 5 and 6 of the Schedule to notification No. 8/67 the figures 12 ares and 60 kgs may be substituted against all the items from 1 to 41.

[Amendment No. 1/68 to Notification No. 8/67.]

M. L. ROUTH, Collector.



## MINISTRY OF COMMERCE

(Office of the Jt. Chief Controller of Imports and Exports)

(Central Licensing Area)

## ORDERS

*New Delhi, the 11th June 1968*

**S.O. 2559.**—A licence No. P/SS/1607539/C dated 15th September, 1967 of the value of Rs. 819/- for import of Copper, Zinc etc. and a Release Order No. 185 for Rs. 166/- for Copper were issued to M/s. Hansa Engg. Works, Moongafali Mandi, Ludhiana subject to the condition as incorporated under Para 89(1) of the Hand Book of Rules and Procedure, 1968.

2. Thereafter show cause notice Nos. 309/64/ENF/CLA/1510, dated 13-5-1968 and 309/64/ENF/CLA/1463, dated 9-5-1968 were issued asking them to show cause within 15 days as to why the said licence and Release Order in their favour should not be cancelled on the ground that the Central Government is satisfied that the licence will not serve the purpose for which it has been granted in terms of Clause 9, sub-clause (cc) of the Imports (Control) Order, 1955.

3. In response to the aforesaid show cause notices, M/s. Hansa Engg. Works, Moongafali Mandi, Ludhiana had furnished no explanation as the Regd. cover containing the said show cause notices came back undelivered from the Postal Authorities with the remarks "Firm Closed".

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence and Release Order in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1607539/C dated 15th September, 1967 for Rs. 819/- and Release Order No. 185 issued in favour of M/s. Hansa Engg. Works, Moongafali Mandi, Ludhiana.

[No. F. 309/64/ENF/CLA/1192.]

To

M/s. Hansa Engg. Works,  
Moongafali Mandi, Ludhiana.

*New Delhi, the 12th June 1968*

**S.O. 2560.**—A licence No. P/SS/1607443/C/XX/24/CD/23-24 dated 22nd September, 1967 of the value of Rs. 3112/- for import of copper, zinc, tin, lead and nickel was issued to M/s. Benisons Industries, Ahata Surendra Transport, Lower Bazar, Kalka subject to the condition that all items of goods imported under it shall be used only in the licence holder's factory at the address shown in the application against which the licence issued and no portion thereof shall be sold to any other party or utilized or permitted to be used in any other manner.

2. Thereafter, a show cause notice No. B-15/67/ENF/CLA/1322, dated 7th May, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Govt. is satisfied that the licence will not serve the purpose for which it has been granted in terms of Clause 9, sub-clause (cc) of the Imports (Control) Order, 1955.

3. In response to the aforesaid show cause notice M/s. Benisons Industries, Ahata Surendra Transport, Lower Bazar, Kalka furnished no explanation.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order 1955 hereby cancel the licence No. P/SS/1607443/X/XX/24/CD/23:24 dated 22nd September 1967 for Rs. 3112/- issued in favour of M/s. Benisons Industries, Ahata Surendra Transport, Lower Bazar Kalka (Haryana).

[No. B-15/67/ENF/CLA/2168.]

To

M/s. Benisons Industries, Ahata Surendra Transport, Lower Bazar, Kalka (Haryana).

*New Delhi, the 18th June 1968*

**S.O. 2561.**—A licence No. P/SS/1607313/C/XX/25/CD/23-24 dated 7th September 1967 of the value of Rs. 2273/- for import of copper, zinc, tin and lead was issued to M/s. C.M.P. Manufacturing Co., Tanda Road, Jullundur City subject to the condition as under:—

"This licence is issued subject to the condition that all items of goods imported under it shall be used only in the licence holder's factory"

at the address shown in the application against which the licence is issued or may be processed in the factory of another manufacturing unit but no portion thereof shall be sold to any other party or utilized or permitted to be used in any other manner. The goods so processed in another factory shall, however, be utilised in the manufacturing processes undertaken by the licensee. The licensee shall maintain a proper account of consumption and utilization of the goods imported against the licence."

2. Thereafter, a show cause notice No. C-4/67/ENF/CLA/648 dated 27th April, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Government is satisfied that the licence will not serve the purpose for which it was granted in terms of Clause 9. sub-clause (cc).

3. In response to the aforesaid show cause notice, M/s. C. M. P. Manufacturing Co., Tanda Road, Jullundur furnished no explanation as the Regd. Cover containing the notice came back undelivered from the postal authorities with the remarks 'Refused'.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1607313/C/XX/25/CD/23-24 dated 7th September, 1967 for Rs. 2273/- issued in favour of M/s. C. M. P. Manufacture Co., Tanda Road, Jullundur City.

[No C-4/67/ENF/CLA/2429.]

To.

M/s. C. M. P. Manufacturing Co.  
Tanda Road, Jullundur City.

J. S. BEDI,

Jt. Chief Controller of Imports & Exports.

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 24th June 1968

SUBJECT.—Issue of duplicate copy of licence No. P/AU/1245123/T/EG/22/C/H/19.20, dated 4th November 1965—Order for Cancellation of original licence.

S.O. 2562.—"M/s. Sree Saraswaty Press Ltd., 32, Prafulla Chandra Road, Calcutta-9, who were granted an import licence No. P/AU/1245123/T/EG/22/C/H/19.20, ated 4th November 1965, have applied for a duplicate of the licence on the ground that the original licence has been misplaced. It is further stated that both the copies of the licence and the letter of authority were made over to M/s. Manubhai Sons and Co., 16, Old Customs House Road, Bombay, for effecting the import of goods. It were registered with the Custom House, Calcutta and utilised fully. The Exchange Purposes copy was however partly utilised for Rs. 1,00,000/- (one lakh) only. The amount for which the licence was originally issued was Rs. 3,95,259/- (Rs. 6,22,533.12 post-devaluation). The duplicate copy of exchange control is now required by them to remit the balance of Rs. 5,22,533.12 paise.

In support of this contention, the applicant has filed an affidavit dated the 5th April, 1968 and sworn before the Magistrate 1st Class, Seldah, Calcutta. I am satisfied that the original licence No. P/AU/1245123/T/EG/22/C/H/19.20 dated 4th November 1965 has been lost and/or misplaced and direct that a duplicate licence should be issued to the applicant. The original licence is cancelled".

[No. S-80/67-V/64-65/NPCIA.]

S. A. SESHAN,

Dy. Chief Controller of Imports & Exports.

## (Office of the Chief Controller of Imports and Exports)

## ORDERS

*New Delhi, the 9th July 1968*

**S.O. 2563.**—M/s. PERDERSHAN TRADERS, Mool Raj Building, P. O. Yousaf Sarai, New Delhi-16, were granted an import licence No. P/NA/AD/2019362/C/XX/25/C/H/21-22/NQQ dated 27th April 1967 for Rs. 25,112 (Rupees Twenty-Five Thousand One Hundred and Twelve only), for the import of certain items of the all-category items as per list attached thereto, under the National Defence Remittance Scheme. They have now represented to this office that they have lost/misplaced the Original Customs purposes copy of the licence and have applied for the issue of a duplicate copy in lieu thereof. They have further stated that the original Custom purposes copy of the licence has not been registered with any Customs Authorities and utilised at all. The duplicate custom purposes copy of the licence now required by the firm is for the full value of the licence viz. Rs. 25,112/-.

2. In support of this contention, the licensee has filed an affidavit. I am accordingly satisfied that the Original Customs Copy of the said licence has been lost. Therefore, in exercise of the powers conferred under cl. 9(CC) of the Imports (Control) Order, 1955 dated 7th December 1955 (as amended), the original Customs Purposes copy of the licence No. P/NA/AD/2019362/C/XX/25/C/H/21-22/NQQ dated 27th April, 1967 issued to M/s. Perdershan Traders, Moolraj Building, Yousaf Sarai, New Delhi-16, is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence is being issued to the licensee separately.

[No. NDRS/P-576/65-66/259.]

M/s. Perdershan Traders.

Moolraj Building, P.O. Yousaf Sarai,  
New Delhi-16.*New Delhi, the 11th July 1968*

**S.O. 2564.**—M/s. The Tata Hydro-Electric Power Supply Co. Ltd., The Andhra Valley Power Supply Co. Ltd., The Tata Power Co. Ltd., Bombay were granted an import licence No. P/HP/2076805/Cash/21/C/H/21/CG.IV dated 6th April 1966 for Rs. 1,25,000/- (Rupees One Lakh and Twenty Five Thousand only). They have applied for the issue of a duplicate Customs Purposes copy of the said licence on the ground that the original Customs Purposes copy has been misplaced. It is further stated that the original Customs Purpose copy was registered with the Customs authorities at Bombay and utilised partly. It was utilised for Rs. 1,00,380/- and the balance available on it was Rs. 24,620/-.

2. In support of this contention, the applicant has filed an affidavit. I am accordingly satisfied that the original Customs Purposes copy of the said licence has been lost. Therefore, in exercise of the powers conferred under sub-clause 9(cc) of the Imports (Control) Order 1955 dated 7th December 1955 as amended, the said original Customs Purposes copy of Licence No. P/HP/2076805/Cash/21/C/H/21/CG.IV dated 6th April 1966 issued to M/s. Tata Hydro-Electric Power Supply Co. Ltd., etc., Bombay is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence is being issued separately to the licensee.

[No. HEP/T-18/65-66/CG.IV/588.]

S. K. GREWAL,

Dy. Chief Controller of Imports &amp; Exports.

## MINISTRY OF PETROLEUM AND CHEMICALS

(Department of Petroleum)

*New Delhi, the 9th July 1968*

**S.O. 2565.**—Whereas by a notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 712 dated 16th February 1968 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to

acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (I) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (I) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government, vest on this date of the publication of this declaration in the Oil and Natural Gas Commission free from all encumbrances.

#### SCHEDULE

State—Gujarat

Distt.—Gandhinagar

Taluka—Gandhinagar

Village	S. No.	Hector	Arc.	P. Arc.
Sertha . . . . .	719	0	40	16
„ . . . . .	719	0	47	55

[No. 20/3/67-Prod/IOC.]

**S.O. 2566.**—Whereas it appears to the Central Government that it is necessary in the public interest that the transport of Petroleum from the drill sites well No. 89 and 107 to well No. K-15 in the (Kalol) Oil Field, in Gujarat State, Pipelines should be laid by the Oil and Natural Gas Commission and that for the purpose of laying such Pipelines, it is necessary to acquire the Right of user in the land described in the schedule annexed thereto.

2. Now, therefore, in exercise of the powers conferred by Sub-Section (i) of the Section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipelines under the land to the Competent Authority, at Elempeeco, 4th floor, Sayaji Gunj, Opp., College, Lokmanya Tilak Road, Baroda-5 in the Office of the Gujarat Pipelines Project (Oil and Natural Gas Commission) Baroda. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

#### SCHEDULE

State—Gujarat

Distt.—Ahmedabad

Tal—Dascroi

Laying Pipeline from well No. 89 & 107 to well No. K-15

Village	S. No.	Hector	Arc	P. Arc
Adalaj . . . . .	440	..	2 } 3 }	12 } 54 }

Village	Sr No.	Hector	Are.	P. Are.
Adalaj	436/3&4 437/1&2 }	..	2	62
"	438/3	..	5	56
"	435/7	..	3	34
"	435/1&3	..	..	80
"	435/4&5	..	9	41
"	435/6	..	1	81
"	435/8	..	12	64

[No. 29(5)/68-IOC.]

**S.O. 2567.**—Whereas it appears to the Central Government that it is necessary in the public interest that the transport of Petroleum from the drill sites well No. 89 and 107 to well No. K-15 in the (Kalol) Oil Field, in Gujarat State Pipelines should be laid by the Oil and Natural Gas Commission and that for the purpose of laying such Pipelines, it is necessary to acquire the Right of user in the land described in the schedule annexed thereto.

2. Now, therefore, in exercise of the powers conferred by Sub-Section (1) of the Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipelines under the land to the Competent Authority, at Elempeeco, 4th floor, Sayaji Gunj, Opp. College, Lokmanya Tilak Road, Baroda-5 in the Office of the Gujarat Pipelines Project (Oil and Natural Gas Commission) Baroda. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a Legal practitioner.

## SCHEDULE

State—Gujarat

Distt.—Ahmedabad

Taluka—Dasroi

Laying Pipeline from well No. 89 &amp; 107 to well No. K-15.

Village	S. No.	Hector	Are	P. Are.
Uvarsad	944/1	..	3	74
"	945/4A 3A 2A	..	8	00
"	945/4B	..	3	84
"	945/6/4C	..	5	36
"	946/1	..	7	18
"	950/2	..	6	47
"	949	..	7	18
"	953/1	..	8	69
"	954/4	..	2	52
"	954/1	..	11	13
"	954/2	..	1	11
"	V. P. Cart Track	..	0	50
"	963/4	..	14	46
"	962	..	5	26
"	995	..	16	89
"	998	..	8	29
"	996/1	..	0	60
"	996/2/2	..	3	74
"	996/2/1	..	7	18
"	993/3/1	..	5	86

[No. F. 29(5)/68/IOC.]

P. P. GUPTA, Under Secy.



**MINISTRY OF FOOD, AGRICULTURE,  
COMMUNITY DEVELOPMENT AND COOPERATION**

(Department of Agriculture)

*New Delhi, the 18th June 1968*

**S.O. 2568.**—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Delhi Zoological Park (Class III and Class IV Posts), Recruitment Rules, 1960, published with the notification of the Government of India in the late Ministry of Food and Agriculture (Department of Agriculture) S.O. No. 2089 dated the 19th August, 1960 at pages 2374—2385 of Part II—Section 3 Sub-Section (ii) of the Gazette of India dated the 27th August, 1960; namely:—

1. These rules may be called the Delhi Zoological Park (Class III and Class IV Posts) Recruitment (Amendment) Rules, 1968.

2. In the Schedule to the Delhi Zoological Park (Class III and Class IV Posts) Recruitment Rules, 1960 for the entries against item 9 relating to Garden 'Supervisor under columns 5 and 6 Age limit, etc., and "Educational & other qualifications" for the entries, the following entries shall be substituted, namely:—

5. Between 18—25 years relaxable upto 30 years in the case of experienced candidates.

6. Degree/Diploma in Agriculture, Botany or Horticulture.

*Desirable*:—experience in Horticulture or Silviculture.

[No. F. 21-5/68-FD.]

S. N. TULSIANI, Under Secy.

**खाद्य, कृषि, सामुदायिक, विकास तथा सहकारिता मंत्रालय**

(कृषि विभाग)

नई दिल्ली, 18 जून 1968

**एस० ओ० 2569.**—संविधान की धारा 309 की व्यवस्था द्वारा प्रदत्त अधिकार का प्रयोग करत हुए राष्ट्रपति जी उस दिल्ली चिड़ियाघर (तृतीय श्रेणी तथा चतुर्थ श्रेणी पद) भर्ती नियम 1960 में और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, जो कि भूतपूर्व खाद्य तथा कृषि मंत्रालय (कृषि विभाग) में भारत सरकार की अधिसूचना के अन्तर्गत भारत के राजपत्र दिनांक 27 अगस्त 1960 क भाग-2 अनुभाग-3 उप अनुभाग (2) के एस० ओ० संख्या 2089 दिनांक 19 अगस्त 1960 पृष्ठ 2374—2385 पर प्रकाशित हुआ था।

1. ये नियम दिल्ली चिड़ियाघर (तृतीय श्रेणी तथा चतुर्थ श्रेणी पद) भर्ती (संशोधन) नियम 1968 कहलाये जाएं।

2. दिल्ली चिड़ियाघर (तृतीय श्रेणी तथा चतुर्थ श्रेणी पद) भर्ती नियम 1960 की अनुसूची में "गार्डन सुपरवाइजर" सम्बन्धी मद संख्या 9 के इन्दराज के लिए कालम संख्या 5 और 6 के अन्तर्गत "आयु सीमा इत्यादि" तथा "शिक्षा तथा अन्य योग्यताएं" के स्थान पर अब निम्नलिखित इंदराज बदल दिये जायें:—

5. 18 से 25 वर्ष के बीच लेकिन अनुभव की उम्मीदवारों के मामले में 30 वर्ष तक छूट।

6. कृषि वनस्पति-विज्ञान अथवा बागवानी में डिग्री/डिप्लोमा बांछनीय-बागवानी अथवा वन-वृक्ष-विज्ञान में अनुभव।

[सं० 21-5/68-एफ० डी०.]

एस० एन० तुलस्यानी, अवर सचिव।

## (Department of Agriculture).

*New Delhi, the 10th July 1968.*

**S.O. 2570**—In exercise of the powers conferred by section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937), the Central Government hereby makes the following rules, the same having been previously published as required by the said section, namely:—

## RULES.

1. These rules may be called the Onions Grading and Marking (Amendment) Rules, 1968.

2. In the Onions Grading and Marking Rules, 1964, for Schedule II, the following Schedule shall be substituted namely:—

## SCHEDULE, II

(See rules 3 and 4)

“Grade designation and definition of quality of Nasik/Saurashtra/Bellary Onions (*Allium cepa* L.)

Grade Designation	Special Characteristics		General Characteristics
	Size (Diameter) in mm (Min.)	Colour	
1	2	3	4
Extra Big. . . . .	55	Light to Ros	The Bulbs shall— be reasonably uniform in shape, colour & progeny characteristics of the variety/type.
Big A. . . . .	45	Do.	
Big./B** . . . . .	45		
Medium A . . . . .	35	Do.	
B** . . . . .	35		
Small A . . . . .	20	Do.	2. be mature, solid in feel, reasonably firm with tough clinging skins free from doubles and bottlenecks.
B** . . . . .	20		
Mixed A*** . . . . .	Different sizes of a variety not below 20 mm.	Do.	3. be thoroughly cured and dried.
B** . . . . .	Different sizes of variety not below 20 mm.		4. be free from damage caused by seed-stemtops, roots, moisture dry sun-scaled, sun-burn, sprouting and mechanical or other injuries and staining dirt or other forcing material and 5. be free from moulds, diseases, softrot, decay and insect attack.

NOTE :— 1. Tolerance for size: —For accidental errors in sizing not more than 5% by weight of the bulbs any lot may be of the next lower grade than the minimum diameter prescribed.

2. Tolerance for requirements in respect of general characteristics.—To allow for variations other than size incident to proper grading & handling not more than 10% by Weight of the Onions may fail to meet the requirements of the grade.

3. Mixed:\*\*\* This grade may be packed against a ‘Firm Order’ only.

B\*\* The grade B shall apply to onion commercially known as phol onions and grown in Nasik District. The percentage of seed stem onions shall not exceed 20% besides the usual tolerance indicated in footnote 2.

[No. 13-29/67-AM].

V. S. NIGAM, Under Secy.

## (Department of Agriculture)

*New Delhi, the 12th July 1968*

**S.O. 2571.**—Whereas the Indian Veterinary Association, Madras, has, in pursuance of clause (c) of sub-section (1) (hereinafter referred to as the said sub-section) of section 5 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), (hereinafter referred to as the said Act) elected Dr. S. D. Sharma as its representative on the Animal Welfare Board with effect from the 7th May, 1968:

And Whereas the Central Government has, in pursuance of clause (d) of the said sub-section, nominated (1) Dr. Y. K. Subrahmanyam and (2) Dr. P. N. V. Kurup, as members of the said Board with effect from the 5th July, 1968;

And whereas the Municipal Corporations of Bombay and Calcutta have, in pursuance of clause (e) of the said sub-section, elected Shri Ravji Khimji Genatra and Dr. G. C. Das as their representatives on the said Board with effect from the 2nd May and 24th May, 1968 respectively;

And whereas the All India Animal Welfare Association, Bombay has in pursuance of clause (f) of the said sub-section, chosen Shrimati Mehra D. Malegamvala as its representative on the said Board with effect from the 14th May, 1968;

And whereas the Assam Society for the Prevention of Cruelty to Animals, Gauhati, and the Bombay Society for the Prevention of Cruelty to Animals, Bombay, have, in pursuance of clause (g) of the said sub-section, chosen Shri D. N. Sarma and Shri Duleep Matthal as their representatives on the said Board with effect from the 12th June and 8th May, 1968 respectively;

And whereas the Council of States has, in pursuance of clause (i) of the said sub-section, elected Sarvashri R. P. Khaithal and G. P. Somasundaram as its representatives on the said Board with effect from the 11th May, 1968;

Now, therefore, in pursuance of sub-section (1) of section 4 read with section 5 of the said Act, the Central Government hereby makes the following further amendments to the notification of the Government of India in the Ministry of Food and Agriculture (Department of Agriculture) S.O. No. 921 dated the 20th March, 1962; namely:—

In the said notification,—

- (a) against item 3, for the entry in the first column, the following entry shall be substituted, namely:—

Dr. S. D. Sharma, L.V.P. (Hons), F.Z.S., Veterinary Officer, SPCA Hospital, Qudsia Road, Delhi-6.

- (b) against items 4 and 5, for the entry in the first column, the following entry shall be substituted, namely:—

(4) Dr. Y. K. Subrahmanyam, Deputy Director General (Small-pox), Directorate General of Health Services New Delhi and

(5) Dr. P. N. V. Kurup, Adviser, Indigenous Systems of Medicine, Department of Health and Urban Development, New Delhi.

- (c) against item 6, for the entry in the first column, the following entry shall be substituted, namely:—

'Shri Ravji Khimji Genatra, 11, Mangal Society, Rafi Ahmed Kidwai Road, Kings Circle, Bombay-19.

- (d) against item 7, for the entry in the first column, the following entry shall be substituted namely:—

'Dr. G. C. Das, Health Officer, Corporation of Calcutta.'

- (e) against item 10, for the entry in the first column, the following entry shall be substituted, namely:—

'Shrimati Mehra D. Malegamvala, Kusum Villa, 14, Alexandra Road, New Gamdevi, Bombay-7.'

- (f) against item 12, for the entry in the first column the following entry shall be substituted, namely:—  
 'Shri Duleep Matthai, Bombay S.P.C.A. No. 1 Government Gate Road, Parel, Bombay-12.'
- (g) against item 14, for the entry in the first column, the following entry shall be substituted, namely:—  
 'Shri D. N. Sarma, Chairman, Assam S.P.C.A., Kedar Road, Gauhati.'
- (h) against item 22, for the entry in the first column, the following entry shall be substituted, namely:—  
 'Shri R. P. Khaithan, M.P., 12/1, Keyatalla Lane, Calcutta/74 South Avenue, New Delhi.'
- (i) against item 23, for the entry in the first column, the following entry shall be substituted, namely:—  
 'Shri G. P. Somasundram, Belucurichi, via Rasimpuram, Salem District, Madras/121, North Avenue, New Delhi.'
- (j) against the entry in the second column relating to item 11 for the words "Madhya Pradesh Gaushala Sangh, Raipur" the words "Andhra Pradesh Jeeva Raksha Sangham, Guntur" shall be substituted.
- (k) against the entry in the second column relating to items 12, 13 and 14, for the words "Delhi Coimbatore and Patna", the words "Bombay, Ahmedabad and Gauhati", shall be substituted.

[No. 18-6/68-L.D. III.]

SANTOKH SINGH, Under Secy.

**MINISTRY OF WORKS, HOUSING AND SUPPLY**

(Department of Works and Housing)

*New Delhi, the 11th July 1968*

**S.O. 2572.**—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby appoints the officer mentioned in column (1) of the Table below being gazetted officer of Government, to be estate officer for the purposes of the said Act and to exercise the powers conferred, and perform the duties imposed on estate officers by or under the said Act, within the Union territory of Delhi in respect of the premises specified in the corresponding entry in column (2) of the said Table.

**THE TABLE**

Designation of officer	Categories of Public premises and local limits of jurisdiction
1	2
Joint Director of Industries (Administration), Directorate of Industries, Delhi Administration, Delhi.	Public premises within the local limits of Okhla and Badli Industrial Estates in the Union territory of Delhi, belonging to, or taken on lease or requisitioned by the Delhi Administration.

[No. 21011(4)/68-Pol.]

V. P. AGNIHOTRI, Dy. Secy.

**MINISTRY OF TOURISM AND CIVIL AVIATION***New Delhi, the 10th July 1968*

**S.O. 2573.**—Whereas on the 28th May, 1968, a Garuda Indonesian Airways Con-  
 vair 990 Aircraft PK-GJA, while on a scheduled passenger flight from Bombay

to Karachi, crashed at village Vilalpada, near Bombay) resulting in the death of all the 15 passengers and 14 members of the crew;

And whereas it appears to the Central Government that it is expedient to hold formal investigation into the circumstances of the said accident;

Now, therefore, in exercise of the powers conferred by rule 75 of the Aircraft Rules, 1937 the Central Government hereby directs that a formal investigation of the said accident be held.

The Central Government is further pleased to appoint Shri Y. S. Tambe, Retired Chief Justice of the Bombay High Court now stationed at Nagpur to hold the said investigation.

The Central Government is also pleased to appoint:

- (1) Shri Y. R. Malhotra,  
Deputy Director General of  
Civil Aviation,  
New Delhi
- (2) Shri C. S. Ballal,  
Senior Design Engineer,  
Hindustan Aeronautics Limited,  
Bangalore.

to act as assessors to the said investigation.

[No. F. 7-A/22-66.]

S. N. KAUL, Under Secy.

## MINISTRY OF INFORMATION AND BROADCASTING

*New Delhi, the 4th July 1968*

S.O. 2574.—Shri B. K. Nundee, Regional Officer, Central Board of Film Censors, on transfer from Bombay assumed charge of the post of Regional Officer, at Calcutta with effect from the afternoon of the 17th June, 1968 *vice* Shri Madan Gopal, Deputy Principal Information Officer, relieved of the additional charge of the post of Regional Officer, Central Board of Film Censors, Calcutta.

[No. F. 2/13/65-FC.]

H. B. KANSAL, Under Secy.

## सूचना और प्रसारण मंत्रालय

नई दिल्ली, 8 जुलाई, 1968

एस०ओ० 2574—बम्बई से स्थानान्तरण होने पर, श्री बी० के० नन्दी ने 17 जून, 1968 के उपरान्त से, उपमध्य सूचना अधिकारी श्री मदनगोपाल ने जिनको प्रादेशिक अधिकारी कन्द्रीय फिल्म सेंसर बोर्ड कलकत्ता क अतिरिक्त भार से मुक्त कर दिया गया, प्रादेशिक अधिकारी, कलकत्ता क पद का भार सम्भाल लिया।

[संख्या 2/13/65-एफ (सी)]

हरि बाबू कंसल, अवसर सचिव।



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**CORRIGENDUM***New Delhi, the 10th July 1968*

**S.O. 2576.**—In the Schedule to this Ministry's S.O. No. 1756 dated 10th May, 1968 appearing in the Gazette of India, Extraordinary Part II Section 3 Sub-Section (ii) No. 172 dated 14th May, 1968 please delete S. No. 3 and all the entries against it in columns 2 to 6.

[No. F. 24/1/68-FP App. 1271.]

BANU RAM AGGARWAL, Under Secy.

# MINISTRY OF INDUSTRIAL DEVELOPMENT & COMPANY AFFAIRS

(Department of Industrial Development)

(Indian Standards Institution)

New Delhi, the 9th July 1968

**S.O. 2577.**—In pursuance of sub-regulation (1) of Regulation 8 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as subsequently amended, the Indian Standards Institution hereby notifies that twenty-one licences, particulars of which are given in the Schedule hereto annexed, have been granted authorizing the licencees to use the Standard Mark :

## THE SCHEDULE

Sl. No.	Licence No. and date	Period of Validity From	To	Name and Address of the Licensee	Article/Process covered by the licence	Relevant Indian Standard
1	2	3	4	5	6	7
1	CM/L-1711 4-6-1968	16-6-68	15-6-69	M/s. Bhaizada & Sons, S/6, Industrial Area, Jullundur City.	(i) Football (laceless) (ii) Volleyball (laceless) (iii) Basketball (laceless)	IS : 417-1965 Specification for footballs, volley balls, basketballs and water polo balls.
2	CM/L-1712 4-6-1968	1-7-68	30-6-69	M/s. Parshotam Singh Gambhir, W/2 Industrial Area, Amuna Nagar, Distt. Ambala.	Plywood tea-chest battens.	IS : 10-1964 Specification for plywood tea-chests (second revision).
3	CM/L-1713 6-6-1968	16-6-68	15-6-69	M/s. Bharat Steel Tube Limited, Ganaur, Distt. Rohtak (Haryana) having their Office at 14-15/E, Connaught Place, New Delhi.	Mild steel tubes.	IS:1239-1964 Specification for mild steel tubes and tubulars (revised).
4	CM/L-1714 11-6-1968	16-6-68	15-6-69	M/s. Timber & Plywood Co. Private Ltd., No. 1, Nimak Mahal Road, Kidderpore, Calcutta having their Regd. Office at 6, Mission Row, Calcutta-1.	Tea-chest metal fittings.	IS : 10-1964 Specification for plywood tea-chests (second revision).
5	CM/L-1715 12-6-1968	16-6-68	15-6-59	M/s. Bajrangbali Engineering Co. Private Ltd., 109, Giriah Ghose Road, Bellurmath, Howrah (West Bengal).	Structural steel (standard quality).	IS:226-1962 Specification for structural steel (standard quality) (third revision).

1	2	3	4	5	6	7
6	CM/L-1716 12-6-1968	16-6-68	15-6-69	M/s. Bajrangbal Engineering Co. Private Ltd., 109, Girish Ghose Road, Bellarmath, Howrah (West Bengal).	Structural steel (Ordinary quality).	IS:1977-1962 Specification for structural steel (ordinary quality).
7	CM/L-1717 12-6-1968	16-6-68	15-6-69	M/s. Ashoka Steel Industries, 13/1, Belur Road, Liluah (Howrah) having their Office at 138, Canning Street, Calcutta.	Structural steel (standard quality).	I : 226-1962 Specification for structural steel (standard quality) ( <i>third revision</i> ).
8	CM/L-1718 12-6-1968	16-6-68	15-6-69	M/s. Ashoka Steel Industries, 13/1, Belur Road, Liluah (Howrah) having their Office at 138, Canning Street, Calcutta.	Structural steel (ordinary quality).	IS:1977-1962 Specification for structural steel (ordinary quality).
9	CM/L-1719 12-6-1968	16-6-68	15-6-69	M/s. Amrit Banaspati Company Ltd., Grand Trunk Road, Ghaziabad (U.P.)	18-Litre square tins.	IS:916-1966 Specification for 18-litre square tins ( <i>first revision</i> ).
10	CM/L-1720 12-6-1968	16-6-68	15-6-69	M/s. Hindustan Transmission Products, Chandivali, Kurla Vihar Road, Bombay-72.	Copper oxychloride water dispersible powder concentrates.	IS:1507-1966 Specification for copper oxychloride water dispersible powder concentrates.
11	CM/L-1721 13-6-1968	16-6-68	15-6-69	M/s. Standard Mineral Products Private Ltd., Subhash Nagar, Jogeshwari (East), Bombay-60.	BHC water dispersible powder concentrates.	IS:562-1962 Specification for BHC water dispersible powder concentrates.
12	CM/L-1722 14-6-1968	16-6-68	15-6-69	M/s. Indo-American Electricals Ltd., G.T. Road, Durgapur-1, Distt. Burdwan, West Bengal having their Regd. Office at 21, Old Court House Street, Calcutta-1.	(i) Enamelled round copper wire with high mechanical properties and (ii) Enamelled round copper wire for elevated temperatures.	(i) IS:1595-1967 Specification for enamelled round copper wire with high mechanical properties ( <i>first revision</i> ). (ii) IS:2659-1964 Specification for enamelled round copper wire for elevated temperatures.
13	CM/L-1723 17-6-1968	16-6-68	15-6-69	M/s. Hindustan Transmission Products (Prop: Madhusudan Ltd.), Chandivali, Kurla Vihar Road, Bombay-72.	Copper sulphate.	IS: 261-1966 Specification for copper sulphate.

14	CM/L-1724 17-6-1968	1-7-68	30-6-69	M/s. Ankar Industries, Jessore Road, P.O. Madhyamgram, Distt. 24 Parganas having their Office at 16/1 Ganesh Chandra Avenue, Calcutta-13.	Aldrin dusting powders.	IS:1308-1958 Specification for aldrin dusting powders.
15	CM/L-1725 18-6-1968	1-7-68	30-6-69	M/s. Hans Raj Mahajan & Sons, G.T. Road, Jullundur City.	Cricket bats.	IS:828-1966 Specification for cricket bats ( <i>revised</i> ).
16	CM/L-1726 18-6-1968	16-6-68	15-6-69	M/s. Apeejay Structural Ltd. P.O. Rajbandh (E. Rly.), Distt Burdwan, West Bengal having their Office at 15, Brabourne Road, Calcutta-1.	Welded low carbon gas cylinders for the storage and transportation of liquefied petroleum gases.	IS:1396-1965 Specification for welded low carbon steel gas cylinders for the storage and transportation of . liquefied petroleum gases.
17	CM/L-1727 24-6-1968	21-6-68	15-6-69	M/s. P. K. Velu & Co. Private Ltd., Agra Road, Naupada, Thana having their Office at 111, Mahatma Gandhi Road, Bombay-1.	Endrin emulsifiable concentrates.	IS:1310-1958 Specification for endrin emulsifiable concentrates.
18	CM/L-1728 25-6-1968	1-7-68	30-6-69	The Indian Steel Rolling Mills Ltd., Main Road, Tiruninravur (Chingleput Distt.) having their Office at 108, Armenian Street, (Oriental Building), Madras-1.	Hot rolled mild steel and medium tensile steel deformed bars for concrete reinforcement.	IS:1139-1966 Specification for hot rolled mild steel and medium tensile steel deformed bars for concrete reinforcement ( <i>revised</i> ).
19	CM/L-1729 27-6-1968	1-7-68	30-6-69	M/s. Kirloskar Brothers Ltd., Kirloskarvadi, Distt. Sangli, Maharashtra State.	Sluice valves for water works purposes (with non-ferrous spindles and rings) class I, with nominal size of 100 mm. and 150 mm.	IS:780-1967 Specification for sluice valves for water works purposes ( <i>third revision</i> ).
20	CM/L-1730 28-6-1968	1-7-68	30-6-69	M/s. Bombay Wire Ropes Ltd., Kolshet Road, Thana having their Office at 72, Advent, Foreshore Road, Bombay-1.	Steel wire ropes for haulage purposes in mines.	IS:1856-1961 Specification for steel wire ropes for haulage purposes in mines.
21	CM/L-1731 28-6-1968	1-7-68	30-6-69	M/s. Forge & Blower Co. (Prop: Laljibhai Jivram Private Ltd.), Naroda Road, Ahmedabad-2, Gujarat State.	Three-phase induction motors, 2.2 KW (3 HP) and 3.7 KW (5 HP) with class 'A' insulation.	IS:325-1961 Specification for three-phase induction motors ( <i>second revision</i> ).

**S.O. 2578.**—In pursuance of sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955 the Indian Standards Institution here by notifies that the Indian Standard(s) particulars of which are given in the Schedule hereto annexed have been established during the period 16 May to 15 June, 1968 :

## THE SCHEDULE

Sl. No.	No. and Title of the Indian Standard Established	No and Title of the Indian Standard or Standards, if any superseded by the new Indian Standard	Brief particulars
(1)	(2)	(3)	(4)
1	IS: 306-1968 Specification for tin bronze ingots and castings ( <i>second revision</i> )	IS: 306-1960 Specification for tin bronze ingots and castings ( <i>revised</i> )	This standard covers the requirements of tin bronze ingots and castings designated as CuSn8Zn4. (Price Rs. 3.50)
2	IS: 455-1967 Specification for portland blastfurnace slag cement ( <i>second revision</i> )	IS: 455-1962 Specification for portland blastfurnace slag cement ( <i>revised</i> )	This standard covers the manufacture and chemical and physical requirements for Portland blastfurnace slag cement. (Price Rs. 4.00)
3	IS: 722 (Part VI)-1968 specification for ac electricity metres Part VI var-hour metres		This standard applies to poly-phase whole-current and transformer-operated var-hour meters with or without maximum demand indicator and other tariff devices or accessories. (Price Rs. 7.00)
4	IS: 842-1968 Specification for smith's swages ( <i>first revision</i> )	IS: 842-1956 Specification for smith's swages	This standard covers the general requirements for the following five types of smith's swages: (a) Bottom swages, small shank, single grooved; (b) Bottom swages, large shank, single grooved; (c) Bottom swages, large shank, double grooved; (d) Top swages, and (e) Top swages, wire clamp type. (Price Rs. 5.00)
5	IS: 1057-1968 Specification for commercial metric carat weights ( <i>first revision</i> )	IS: 1057-1958 Specification for commercial metric carat weights	This standard prescribes the requirements for commercial metric carat weights intended for use in weighing pearls, diamonds and other precious stones. (Price Rs. 3.50)
6	IS: 1076-1967 Preferred numbers ( <i>first revision</i> )	IS: 1076-1957 Specification for preferred numbers	This standard consists of three sections. Section 1 lists the preferred numbers in the four basic series (R5, R10, R20 and R40), as well as the additional R60 series intended for special application. Section 2 contains a guide to the use of preferred numbers. Section 3 contains guide to the choice of series of preferred numbers and of series containing more rounded values of preferred numbers. (Price Rs. 8.50)



(1)	(2)	(3)	(4)
7	IS: 1109-1968 Specification for borax ( <i>first revision</i> )	IS: 1109-1957 Specification for borax technical	This standard prescribes the requirements and the methods of sampling and test for borax. (Price Rs. 5.00)
8	IS: 1305-1967 Specification for graphite for use as foundry facing material ( <i>second revision</i> )	IS: 1305-1963 Specification for graphite for use as foundry facing material ( <i>revised</i> )	This standard covers the requirements for three grades of graphite, namely, grades 1, 2 and 3 for use as foundry facing material. (Price Rs. 3.50)
9	IS: 1385-1968 Specification for phosphor bronze rods and bars, sheet and strip, and wire ( <i>first revision</i> )	IS: 1385-1959 Specification for phosphor bronze rods and bars, sheet and strip, and wires	This standard covers the requirements for two grades of phosphor bronze for rods and bars, sheet and strip and wire, designated as PCuSn4 and PCuSn6. (Price Rs. 4.00)
10	IS: 1408-1968 Recommended procedure for inspection of copper-base alloy sand castings ( <i>first revision</i> )	IS: 1408-1959 Specification for recommended procedure for inspection of copper-base alloy sand castings	This standard recommends suitable procedures for industrial inspection of copper-base alloy and castings to ensure that they comply with the relevant specifications. (Price Rs. 5.00)
11	IS: 1524-1958 Specification for refractory sleeves ( <i>first revision</i> )	IS: 1524-1960 Specification for refractory sleeves for steel plants.	This standard covers the requirements for refractory sleeves. (Price Rs. 2.00)
12	IS: 1525-1968 Specification for ladle refractories for steel plants ( <i>first revision</i> )	IS: 1525-1960 Specification for ladle refractories for steel plants	This standard covers the requirements for ladle refractories used for teeming of steel. (Price Rs. 2.00)
13	IS: 1540 (Part I)-1967 Specification for quick lime and hydrated lime for chemical Industries Part I quick lime ( <i>first revision</i> )	IS: 1540-1959 Specification for quick lime and hydrated lime for chemical industries	This standard prescribes the requirements and the methods of sampling and test for quick lime for chemical industries. (Price Rs. 8.00)
14	IS: 1823-1968 Specification for floor door stoppers ( <i>first revision</i> )	IS: 1823-1961 Specification for floor door stoppers	This standard lays down the requirements for floor door stopper suitable for use with door shutters of 30, 35, 40 and 45 mm thickness. (Price Rs. 2.50)
15	Index to IS: 1870-1965 Comparison of Indian and overseas standards for wrought steels for general engineering purposes	..	Index to IS: 1870-1965. (Price Rs. 5.00)
16	IS: 1885 (Part X)-1968 Electrotechnical vocabulary Part X Electrical power system protection	..	This standard covers definitions of terms applicable to electrical power system protection. (Price Rs. 5.00)
17	IS: 1997-1967 Specification for burettes ( <i>first revision</i> )	IS: 1997-1961 Specification for burettes	This standard prescribes the dimensional requirements and the method of sampling and test for burettes required for general laboratory purposes. (Price Rs. 5.00)

(1)	(2)	(3)	(4)
18	IS: 2766 (Part I)-1968 Methods of chemical analysis of primary nickel Part I	..	This standard covers methods of chemical analysis of nickel, cobalt and copper (Grades 1 and 2), sulphur, carbon and iron (Grade 2) of primary nickel covered by IS: 2782-1964. (Price Rs. 6.00)
19	IS: 3373 (Part II)-1967 Specification for wirewound resistors, type II Part II vitreous enamelled	..	This standard covers the requirements for vitreous enamelled wirewound resistors, type II used in electronic and telecommunication equipment. (Price Rs. 5.00)
20	IS: 3400 (Part VI)-1967 Methods of test for vulcanized rubbers Part VI Resistance to liquids	..	This standard prescribes test procedures for determination of change in volume or dimensions, soluble matter extracted by liquid, mechanical tests on swollen rubber and mechanical properties after immersion and drying in Section 1, Section 2, Section 3, and Section 4 respectively. (Price Rs. 6.00)
21	IS: 3435-1968 Specification for 99 percent secondary aluminium notched bars and ingots for remelting for aircraft purposes	..	This standard covers requirements for 99 percent secondary aluminium notched bars and ingots for remelting for aircraft purposes. (Price Rs. 2.00)
22	IS: 3596-1967 Glossary of terms relating to hosiery	..	This standard covers the definitions of terms commonly used in the hosiery industry and trade. (Price Rs. 12.00)
23	IS: 4033-1968 General requirements for hospital furniture	..	This standard covers general requirements for hospital furniture. (Price Rs. 2.00)
24	IS: 4207-1967 Specification for leather for football.	..	This standard prescribes the requirements and the methods of sampling and test for leather for football produced by full-chrome tannage, chrome aluminium combination tannage or by vegetable tannage. (Price Rs. 6.00)
25	IS: 4400 (Part II)-1967 Methods of measurements on semiconductor devices Part II low power signal diodes.	..	This standard covers methods of measurement on low power signal diodes or characteristics covered by IS: 3700 (Part II)-1967. (Price Rs. 6.00)
26	IS: 4410 (Part I)-1967 Glossary of terms relating to river valley projects Part I Irrigation practice.	..	This standard covers definitions of terms commonly occurring in the limited field of irrigation practice, for example, types of crops, areas and water requirements. (Price Rs. 3.50)

(1)	(2)	(3)	(4)
27	IS:4410 (Part II)-1967 Glossary of terms relating to river valley projects Part II Project planning.	..	This glossary contains definitions of terms relating to types of projects, preliminary investigations and surveys, types of reports, economic aspect of project planning, estimates and contracts. (Price Rs. 8.00)
28	IS:4410 (Part III)-1967 Glossary of terms relating to river valley projects Part III River and river training.	..	This standard contains definitions of terms relating to types of river, river flow behaviour, channel erosion, sediment load and river training (Price Rs. 5.50).
29	IS:4425-1967 Specification for p-Nitrotoluene o-sulphonic acid.	..	This standard prescribes the requirements and the method of sampling and test for p-nitrotoluene o-sulphonic acid (Price Rs. 4.00).
30	IS:4430-1967 Specification for mould steels.	..	This standard covers mould steels in wrought condition These are generally used for moulds for plastics and for die casting of low melting non-ferrous alloys. (Price Rs. 3.50).
31	IS 4432-1967 Specification for case hardening steels	..	This standard covers the requirements for wrought unalloyed and alloyed steel bars, billets and finished forgings for case-hardening (Price Rs. 5.50)
32	IS:4451-1967 Specification for toxaphene, technical.	..	This standard prescribes the requirements and the method of test for toxaphene, technical (Price Rs. 7.00).
33	IS:4453-1967 Code of practice for exploration by pits, trenches, drifts and shafts.	..	This standard lays down the method for exploration by means of pits, trenches, drifts and shafts. (Price Rs. 5.50).
34	IS:4456 (Part I)-1967 Methods of test for chemical resistant mortars Part I silicate type and resin type	..	This standard covers the methods for carrying out light tests on silicate type and resin type chemical resistant mortars. (Price Rs. 7.50).
35	IS:4466 (Part I)-1967 Recommendations for farm cattle housing for plain areas with medium rainfall.	..	This standard recommends a layout and constructional requirements of a farm cattle shed for an average farmer having normally three milch animals with their calves and a pair of bullocks. (Price Rs. 3.50).
36	IS:4472 (Part I)-1967 Methods for identification of the application classes of dyes on textile materials Part I Cotton and other cellulosic fibres.	..	This standard prescribes methods for identification of application classes of dyes on cotton and other cellulosic fibres. (Price Rs. 4.00).

(1)	(2)	(3)	(4)
37	IS:4477 (Part I)-1967 Methods of measurement of fluid flow by means of venturi meters Part I liquids.	..	This standard specifies the profile and sizes and materials for the manufacture of venturi meters and venturi nozzles besides setting out the procedure for the measurement of non-pulsating, single phase, clean (free from dirt and free gases) liquids. (Price Rs. 9.50).
38	IS:4479-1967 Methods of measurements on magnetic tapes for sound recording and reproduction.	..	This standard lays down the methods of measurements for determining the physical, mechanical and electrical performance characteristics of magnetic tapes for sound recording and reproduction. (Price Rs. 6.00).
39	IS:4484-1967 Specification for electrically welded stud link anchor chains and attachments.	..	This standard lays down the specification for the electrically welded stud link anchor chains for ships with Dee type and Kenter type shackles. (Price Rs. 8.00).
40	IS:4486-1967 Recommended methods for the determination of the permittivity and dielectric dissipation factor of electrical insulating materials at power, audio and radio frequencies including metre wavelengths.	..	This standard covers test methods for determination of permittivity and dissipation factor and of quantities calculated from them, such as loss index within the frequency range of 50 c/s to 300 Mc/s, of electrical insulating materials—liquids, fusible as well as solid materials. (Price Rs. 9.50).
41	IS:4494-1968 Specification for tables, overbed.	..	This standard lays down the requirements of fixed height overhead tables used in hospitals and other similar institutions. (Price Rs. 2.00).
42	IS:4495-1968 Method of measurement of light output of cinematograph projectors (for narrow gauge film).	..	This standard specifies the measurement of the light output of cinematograph projectors for narrow gauge film (16 mm and less). (Price Rs. 2.00).
43	IS:4496-1968 Screen luminance for the projection of 16 mm film by incandescent lamps.	..	This standard recommends the screen luminance (brightness) for the projection of 16 mm colour, and black-and-white cinematograph film by incandescent lamps. (Price Rs. 2.50).
44	IS:4500-1967 Specification for pipe wrenches, foot print type.	..	This standard specifies the requirements for pipe wrenches, foot print type, for general engineering purposes. (Price Rs. 4.00).
45	IS:4505-1968 Specification for ballast forks.	..	This standard lays down the requirements for ballast forks for general purposes. (Price Rs. 3.50).

(1)	(2)	(3)	(4)
46	IS:4514-1968 Specification for forceps, tonsil dissecting (waugh's pattern).	..	This standard covers the requirements for tonsil-dissecting forceps (Waugh's pattern), toothed toothed with serrations, and, serrated. (Price Rs. 2.50).
47	IS:4516-1968 Specification for elliptical mild steel tubes.	..	This standard covers the requirements for welded and seamless elliptical mild steel tubes for structurals and heat exchangers. (Price Rs. 2.50).
48	IS:4517-1967 Specification for brush, welder's.	..	This standard prescribes the requirements and the methods of sampling and test for welder's brush. (Price Rs. 3.50).
49	IS:4518(Part I)-1967 Methods of tests for styrene-butadiene rubber (sbr) Part I Determination of volatile matter, total ash, organic acid, soap, antioxidants, bound styrene and mooney viscosity.	..	This standard prescribes the methods of preparing samples and tests for raw styrene-butadiene rubbers. (Price Rs. 8.50).
	IS : 4520—1968 Specification for forceps, punch, nasal (citelli's antrum and hajek's sphenoidal)	..	This standard lays down the requirements for nasal punch forceps (Citelli's antrum and Hajek's sphenoidal) (Price Rs. 2.50).
51	IS : 4531—1968 Specification for swivels	..	This standard lays down the basic requirements of two types of swivels using ball bearings and plain bearings respectively. (Price Rs. 5.00)
52	IS : 4534—1968 Specification for adapter for terminal devices, artificial limbs	..	This standard specifies the requirements pertaining to materials, shape, dimensions, workmanship and finish of adapter for terminal devices. (Price Rs. 2.00)
53	IS : 4539—1968 : Performance requirements for auto-rickshaw meters, distance-cum-time type	..	This standard covers the performance requirements for distance-cum-time type auto-rickshaw meters to determine charges for hire of auto-rickshaws (Price Rs. 3.50)
54	IS : 4541—1968 Glossary of tea terms	..	This standard covers definitions of tea tasting terms, terms relating to tea manufacture and those used by producers, buyers, blenders and brokers in the trade. (Price Rs. 6.50)
55	IS : 4543—1957 Specification for marquenching oils	..	This standard prescribes the requirements and methods of sampling and test for marquenching oils. (Price Rs. 2.00)
56	IS : 4547—1968 Performance requirements of receivers for monochrome television broadcast transmissions	..	This standard covers general requirements and minimum performance requirements for mains-operated television receivers employing vacuum tubes. (Price Rs. 3.50)



(1)	(2)	(3)	(4)
57	IS : 4548 (Part I)—1967 Methods of chemical analysis of copper-gold brazing alloys Part I Analysis of gold and copper.	..	This standard covers the methods of chemical analysis of gold and copper in copper-gold brazing alloys as specified in IS : 2927—1964. (Price Rs. 3.50)
58	IS : 4550—1958 Recommendation for positioning of magnetic compasses in ships.	..	This standard gives general recommendations governing the minimum distance of a compass from magnetic material taking into consideration the accuracy required for the compass for normal navigation (Price Rs. 2.50).
59	IS:4551—1968 Specification for lifeboat crutches.	..	This standard specifies the method of manufacture, material and dimensions of crutches. (Price Rs. 2.00)
60	IS:4552—1968 Specification for portable jacks for automobiles, mechanical and hydraulic.	..	This standard specifies the main dimensions and methods of test for portable jacks commonly used for passenger cars and commercial vehicles. The jacks covered in this standard may be operated hydraulically or mechanically and in the latter case, they may be applied from below the vehicle or from its sides or end. The jacks may be designed for a single lift or multiple lift (Price Rs. 3.50)
61	IS 4553—1957 Specification for leather for cricket ball.	..	This standard prescribes the requirements, methods of sampling and test for vegetable tanned leather for the manufacturer of cricket balls. (Price Rs. 5.00)
62	IS:4554—1968 Specification for hammers terminal devices, ball pein and claw, for artificial limbs.	..	This standard specifies the requirements pertaining to material, shapes, dimensions, workmanship, finish and hardness of ball pein and claw hammer terminal devices. (Price Rs. 2.00)
63	IS:4556—1968 Specification for typing finger terminal device for artificial limbs.	..	This standard specifies the requirements pertaining to material, shape, dimensions, workmanship and finish for typing finger terminal device. (Price Rs. 2.00)
64	IS:4557—1968 Specification for appliance, office, flat adjustable, for artificial limbs.	..	This standard specifies the requirements pertaining to material, shape, dimensions, workmanship and finish for adjustable flat office appliance terminal device. (Price Rs. 2.00)

(1)	(2)	(3)	(4)
65	IS 4558—1968 Code of practice for under-drainage of lined canals.	..	This standard covers method for under-drainage of line canals. However, it does not cover alignment through gypseous soils. (Price Rs. 3.50)
66	IS:4569—1968 Specification for scissors, eye.	..	This standard covers the requirements for eye scissors (iris, strabismus, enucleation, tenotomy, conjunctival, and corneal grafting) (Price Rs. 5.00)
67	IS:4572—1968 Specification for polyamide (nylon) filament ropes (hawser-laid)	..	This standard prescribes requirements of two grades of 3-strand (hawser-laid) ropes made from polyamide filaments of density 1.14 (approx). This standard covers ropes having nominal linear density from 11 to about 6000 kilotex and diameter from 4 to 96 mm. (Price Rs. 4.00)

Copies of these Indian Standards are available, for sale, with the Indian Standards Institution, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-1 and also its branch offices at (i) Bombay Mutual Terrace, Sandhurst Bridge, Bombay-7, (ii) Third and Fourth Floors, 5 Chowringhee Approach, Calcutta-13, (iii) Second Floor, Sathyamurthi Bhavan, 54 General Patters Road, Madras-2 and (iv) 117/418B, Sarvodaya Nagar, Kanpur.

[No. CMD/13:2.]

(DR.) SADGOPAL,  
Deputy Director General.

## MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 9th July 1968

**S.O. 2579.**—In pursuance of Section 17 of the Industrial Disputes Act 1947, (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Bombay in respect of an application under Section 33A of the said Act filed by Shri I. S. Gopalakrishnan, Senior Technical Officer, Air India, which was received by the Central Government on 25th June, 1968.

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL BOMBAY

COMPLAINT No. CGIT-8 of 1968

(Arising out of Reference No. CGIT-26 of 1967)

#### PARTIES:

Shri I. S. Gopalakrishnan—Complainant.

Vs.

Air India Corporation, Bombay—Opp. Party.

#### PRESENT:

Shri A. T. Zambre, Presiding Officer.

## APPEARANCES:

*For the Air India*—Shri T. V. Lalvani, Industrial Relations Adviser, Air India.

*For the Complainant*—Shri I. S. Gopalakrishnan, Senior Technical Officer, Air India.

STATE: Maharashtra.

INDUSTRY: Airways.

Bombay, the 19th June, 1968

## AWARD

1. Mr. I. S. Gopalakrishnan Sr. Technical Officer of the Air India Corporation has filed this application against the corporation under section 33(a) of the Industrial Disputes Act, 1947.

2. The employees of the Air India Corporation represented by the Air Craft Engineers' Association had made a demand to the corporation that no one except the Air Crafts maintenance engineers employed by the corporation should be required or allowed to inspect or certify the maintenance or over-haul of aircraft or its components or do both as per terms of the agreement arrived at between corporation and the association. The management had not accepted the claim and had contended that the agreement had nothing to do whatsoever with the inspection and certification of Air Crafts. They have contended that the employment of approved inspectors in the work-shop of the corporation at Santacruz was the long standing practice followed and was in accordance with the Director General of Civil Aviation requirement for approved inspection. As a result this dispute could not be settled and the employees had resorted to strike and the matter has been referred to the tribunal and is pending in reference No. CGIT-26 of 1967.

3. The complainant who was working as the senior technical officer in the scale of Rs. 1000—115—1500 and drawing Rs. 1400 was alleged to have taken part in the above mentioned illegal strike and was proceeded for misconduct. The corporation charged the complainant with three misconducts:—

- (a) Wilful in-subordination and disobedience of the lawful and reasonable order of his superiors.
- (b) Absence from duty without permission and without sufficient cause in combination with orders.
- (c) Aiding and abetting an illegal strike by the All India Air Craft Engineers' Association.

4. A departmental enquiry committee was appointed and after notice an enquiry was held.

5. The complainant Gopalakrishnan did not take part in the departmental enquiry proceeding and it was heard *ex parte* and as the result of the departmental enquiry the General Manager removed him from services by order No. GM/74-15(B)/6214 dt. 17th November, 1967 which was communicated to him by the Personnel Manager in letter No. STR/MISC/6212 dt. 17th November, 1967. The complainant thereafter preferred an appeal against the order of removal. The appellate authority, chairman of the corporation after hearing the appellant accepted the finding of the enquiry committee regarding the misconduct. But considering the good record of service of the complainant modified the order of sentence and passed an order reducing him by the stage i.e. Rs. 1300 in the same grade.

6. The complainant had in the complaint alleged that he was directly concerned in the dispute pending before the tribunal in reference No. CGIT/26/1967. The departmental enquiry held by the corporation was merely an offshoot of the strike undertaken by the workmen which resulted in the reference. The corporation had not obtained any permission of the tribunal before passing the order. The enquiry was illegal *malafide* and unjust. It was also opposed to the cannons of natural justice and the same should be set aside.

7. In reply to the complaint the management denied the allegation and contended that the complainant who was working as senior technical officer was not a workman as defined in section 2 of the Industrial Disputes Act, 1947 and the complaint was not maintainable. It was further contended that the complainant was not a workman concerned in the dispute which is pending before the tribunal

and the misconduct for which the complainant was punished was not connected with the dispute in the pending reference. They denied the allegations about the illegality *malafide* nature of the enquiry and have contended that the enquiry was properly held in accordance of the principles of the natural justice. The complainant had also preferred an appeal and after hearing him the appellate authority and accepted the finding of the enquiry committee and reduced the sentence on compassionate grounds. And as there was no contravention of the provisions of section 33 of the Industrial Disputes Act the complaint should be dismissed.

8. After the complaint and notices to the parties, the tribunal received a letter purporting to have been sent by the complainant intimating the tribunal that he would like to withdraw his complaint where upon notices were issued to the parties and the matter was fixed for hearing.

9. The complainant who is present admitted that he had sent the letter about the withdrawal of the complaint. He requested the tribunal to give permission to withdraw the complaint as he did not want to proceed with the same. The corporation has also no objection. As the complainant does not press his complaint, it shall have to be held that the management has not contravened the Provisions of Section 33 of the Industrial Disputes Act and the complainant is not entitled to any relief. Hence my award accordingly.

10. No order as to costs.

(Sd.) A. T. ZAMBRE

(Sd.) A. T. ZAMBRE,

Central Government Industrial  
Tribunal, Bombay.

Copy of the award is to be submitted to the Government as required by law.

[No. 4/163/67/LR-III.]

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### ORDERS

*New Delhi, the 12th July 1968*

S.O. 2580.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Calendonian Insurance Company, Limited, 50, Janpath, New Delhi and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal of which Shri Ishwar Das Pawar shall be the Presiding Officer with headquarters at Chandigarh and refers the said dispute for adjudication to the said Tribunal.

### SCHEDULE

Whether the following demands of the General Insurance Employees Association Northern Zone, New Delhi for the peons and drivers of the Calendonian Insurance Company New Delhi are justified? If so, to what relief are the workmen entitled and from what date?

1. Free medical aid for the workmen and their dependents.
2. The period of probation should be three months.

[No. 25/11/68-LR.III.]

**S.O. 2581.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Messrs Bolani Ores Limited, Post Office Barbil, District Keonjhar (Orissa) and their workmen, in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal No. 3, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the termination of the services of Sri Tul Bahadur, Security Guard, with effect from the 12th January, 1966 by the management of Messrs Bolani Ores Limited, Post Office Barbil, District Keonjhar (Orissa) was justified? If not, to what relief, is he entitled?

[No. 24/19/68-LRI.]

O. P. TALWAR, Under Secy.

#### (Department of Labour and Employment)

*New Delhi, the 11th July 1968*

**S.O. 2582.**—The following draft of a notification, which the Central Government proposes to make, in exercise of the powers conferred by sub-section (2) of section 26 of the Minimum Wages Act, 1948 (11 of 1948), is hereby published for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 30th August, 1968.

Any objections or suggestions which may be received from any person in respect of said draft before the date so specified will be considered by Central Government.

#### *Draft Notification*

In exercise of the powers conferred by sub-section (2) of section 26 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government hereby directs that, for a period of three years from the date of publication of this notification, the provisions of sub-section (3) of section 18 of the said Act, in so far as it relates to the issue of the wage slips shall not apply to the employees of the M.E.S. and the Military Farms, who are on time scales of pay approved by the Central Government and are employed in any scheduled employment.

[No. LWI(I)-8(3)/66.]

C. R. NAIR, Under Secy.

#### (Department of Labour and Employment)

*New Delhi, the 11th July 1968*

**S.O. 2583.**—Whereas it appears to the Central Government that the employer and the majority of employees in relation to the establishment known as Messrs Shalimar Textile Stores, 307-308, Green House, Green Street, Off. Bank Street, Fort, Bombay-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment.

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of December, 1967.

[No. 865/68-PF.II.]



**S.O. 2584.**—Whereas the State Government of Maharashtra has, in pursuance of clause (d) of sub-section (1) of section 10 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Dr. L. D. Thatte, Deputy Director, Employees' State Insurance Scheme, Government of Maharashtra, to be a member of the Medical Benefit Council in place of Dr. P. M. Bhandarkar;

Now, therefore, in pursuance of sub-section (1) of section 10 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2899 dated the 27th September, 1966, namely:

In the said notification, under the heading "[Nominated by the State Governments concerned under clause (d) of sub-section (1) of section 10]", for the entry against item (11), the following entry shall be substituted, namely:—

"Dr. L. D. Thatte,

Deputy Director, Employees' State Insurance Scheme,  
Government of Maharashtra, Bombay."

[No. F. 3(20)/66-HI.]

**S.O. 2585.**—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factory, namely, the Haffkine Institute Farm, Pimpri (near Poona) in an implemented area, hereby exempts the said factory from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period of one year with effect from the 2nd July, 1968.

[No. F.6(29)/68-HI.]

**S.O. 2586.**—Whereas it appears to the Central Government that the employer and the majority of employees in relation to the establishment known as Messrs Hiranand Vallram, 34 Fort Street, Near Red Gate, Bombay-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of December, 1967.

[No. 8/66/68-PF-II.]

*New Delhi, the 15th July 1968*

**S.O. 2587.**—Whereas the Central Government was satisfied that:

- (1) Govt. Steam Power Station.
- (2) Tanda Industrial Company.

were situated in Sohwal area which was a sparse area (that is, an area whose insurable population was less than 500) in the district of Faizabad in the State of Uttar Pradesh;

And whereas by virtue of their location in a sparse area, the aforesaid factories were granted exemption from the payment of the employers' special contribution under section 73F of the Employees' State Insurance Act, 1948 (34 of 1948) until enforcement of the provisions of Chapter V of the Act in that area by the Central Government in the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 2665, dated the 2nd November, 1961;

And whereas the Central Government is satisfied that the insurable population of the Sohwal area in the district of Faizabad in the State of Uttar Pradesh has now exceeded 500, and it is no longer a sparse area;

Now, therefore, in exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the said notification namely:—

In Schedule VI to the said notification under "Allahabad Division", against serial No. 8, the entry relating to Faizabad in column 3 and the corresponding entries in columns 4 and 5 shall be omitted.

[No. F. 6(63)/68-HI.]

#### CORRIGENDUM

*New Delhi, the 9th July 1968*

**S.O. 2588.**—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1390, dated the 15th April, 1968, published on pages 1881-1882 of the Gazette of India, Part II, Section 3(ii) dated the 20th April, 1968:—

In the Schedule appended to the said notification, against serial No. 7 in column 4,

For 'Village & P.O. Nurpur'

Read 'Main Road'

[No. F. 6(9)/68-HI.]

DALJIT SINGH, Under Secy.

#### (Department of Labour and Employment)

*New Delhi, the 12th July 1968*

**S.O. 2589.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 10th July, 1968.

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 97 of 1963

#### PARTIES:

Employers in relation to the Jamadoba Colliery of M/s. Tata Iron and Steel Company Limited, P.O. Jealgora, (Dhanbad).

*Versus*

Their Workmen

#### PRESENT:

#### APPEARANCES:

*For the Employers.*—Shri S. S. Mukherjee, Advocate.

*For the Workmen.*—Shri D. Narsingh, Advocate.

*Dhanbad, dated the 29th June 1968*

#### AWARD

This is one of the batch of eight cases which have been remanded by the Patna High Court for hearing on merits and for disposal in accordance with law. In all the cases, Shri S. S. Mukherjee, Advocate, appearing on behalf of the employers, took the preliminary objection that the references were invalid because they were cases of individual and not industrial disputes. His ground was that the workmen concerned were not members of any union at the time of their dismissal. Shri Raj Kishore Prasad, who was then the Presiding Officer of this Tribunal, upheld that objection and rejected all the references.

2. The workmen filed Writ Applications in the Patna High Court against the Awards in all the eight cases. Civil Writ Jurisdiction Case No. 192 of 1966 was filed against the Award in this case. Their Lordships took up this case and held that the crucial date was the date of reference and that an individual dispute turns into an industrial dispute if, before the date of reference, the union comes into existence and the concerned workman becomes a member of that union or if a sufficient number of workmen sponsor the concerned workmen's cause.

3. In view of this principle, their Lordships held that the reference was valid. They, therefore, quashed the Tribunal's Award and remanded the reference to this Tribunal for hearing as I have already said.

4. Shri S. S. Mukherjee attempted again to raise the preliminary objection and to urge that the union did not come into existence and the concerned workman did not become its member even before the date of reference. I did not permit him to raise the preliminary objection because their Lordships have specifically held that "a union of the workers of Jamadoba Colliery had come into existence, the dismissed workman had become a member of the union, and his cause had been sponsored by the union" before 19th December 1963, the date on which the reference was made.

5. The Central Government has made this reference by its Order No. 2/69/63-LRII, dated, 19th December 1963, for adjudication of the dispute mentioned in the schedule which is as follows:—

#### SCHEDULE

"Whether the dismissal of Shri Tulsi, Loco Driver, of Jamadoba Colliery of Messrs Tata Iron & Steel Company Limited, Jamadoba, Post Office Jealgora, (Dhanbad) with effect from the 7th August, 1962, was justified? If not, to what relief is he entitled?"

6. It is alleged by the employers that Tulsi, the concerned workman was on duty in 'B' shift on the 13th July, 1962 and that, due to his gross negligence, empty mine cars were repeatedly derailed in the 13th level with the result that the track and cables were damaged and the raising of coal suffered. Chargesheet No. 517/62, dated 14th July 1962 (Ext. M) was issued to him and he gave the reply (Ext. M 1). The Enquiring Officer, Shri S. N. Pandey, Welfare Officer (P), issued a notice (Ext. M 2) to the alleged delinquent and others, saying that enquiry would be held on 23rd July 1962. The enquiry appears actually to have been held on the 24th July, 1962 in the presence of Tulsi.

7. The most important witness examined against Tulsi on the 24th August, 1962 was Shri Pichamuthu, Assistant Manager. His statement is Ext. M3. He has dealt with Tulsi's reply (Ext. M1) in which he has said that the cause of the damage was that the loco was old, the cables were old and the track was bad. Shri Pichamuthu has said that these reasons given by Tulsi cannot be accepted because other loco drivers used the same loco, the same cables and the same track and their work was far more speedy and without derailment of the mine car. He has given the following details about the supply:—

	Date	Shift	Amount of Supply	Reason	Remark
1.	9-7-62	B	20 mine cars	Due to derailment	Tulsi was the loco-driver.
	9-7-62	C	59 " "	No derailment	Another loco driver.
	9-7-62	A	64 " "	—do—	—do—
2.	11-7-62	B	36 " "	Due to derailment	Tulsi was the loco-driver.
	11-7-62	C	56 " "	No derailment	Another loco driver.
	11-7-62	A	60 " "	—do—	—do—
3.	13-7-62	B	42 " "	Due to derailment	Tulsi was the loco-driver.
	13-7-62	C	60 " "	No derailment	Another loco driver.
	13-7-62	A	62 " "	—do—	—do—

The above details show clearly that detailments took place only when Tulsi was on duty as loco driver and there was no derailment when other loco drivers were on duty. This does not bear out the defence of Tulsi that the derailment took place because of the loco and cable being old and the track being bad. If that had been correct, derailment should have taken place also when other loco drivers were on duty.

8. Tulsi's statement (Ext. M 4) was recorded on the 24th July and he did not then add anything to what he had said in his reply (Ext. M 1). The statement of Mukti (Ext. M 5) was also recorded but he has not said anything useful.

9. The Enquiring Officer, Shri S. N. Pandey, has written out a well-reasoned report (Ext. M 6) and has come to the conclusion that Tulsi was guilty of gross negligence of work. Accepting this opinion, Shri H. Neogi, Asstt. Chief Mining Engineer, has addressed a letter (Ext. M 8) to Tulsi by which he has conveyed his dismissal from the company's service with effect from the 7th August, 1962. Ext. M 10 is a letter dated 15th May 1962 of the Chief Mining Engineer addressed to the Chief Inspector of Mines. It has been stated in that letter that Shri H. Neogi has been appointed Asstt. Chief Mining Engineer and Agent for Jamadoba Group of Collieries.

10. Shri Narsingh who has appeared on behalf of the workman, has not been able to point out anything in the domestic enquiry which can be said to be against the principles of natural justice. All that he has argued is that Tulsi has been found guilty of misconduct under clause 19(6) of the standing orders but that clause requires that he should be guilty of habitual neglect of work or negligence. He has contended that one act of negligence cannot be held to be habitual negligence. In my opinion, there is no force in this contention because, according to the finding of the enquiring officer, he was guilty of negligence at least on three days. Tulsi's service record (Ext. M 9) has also been filed. It shows that he was punished several times for mishandling loco and for other offences. It can, therefore, be said in this case that Tulsi has been guilty of habitual negligence. Even supposing for the sake of argument that it cannot be said that his negligence was habitual, his dismissal can be justified under clause 19(9) under which also he was charged. That clause defines the misconduct of "causing damage to work in progress or to property of the company". On the evidence, there can be no doubt that he caused damage to the company's property and also caused diminution in production by reason of the derailment.

11. No other point has been raised. On a consideration of all the facts of the case, I hold that the dismissal of Tulsi is justified. The second question does not, therefore arise, for consideration. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act.

(Sd.) KAMLA SAHAI,  
Presiding Officer.

[No. 2/69/63-LRII.]

**S.O. 2590.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Palana Colliery, Palana (Bikaner) and their workmen, which was received by the Central Government on the 9th July, 1968.

# CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JABALPUR

*Dated July 2, 1968*

## **PRESENT:**

Sri G. C. Agarwala—Presiding Officer.

Case Ref. No. CGIT/LC(R)(130) of 1967

## **PARTIES:**

Employers in relation to the Palana Colliery, Palana (Bikaner).

*Versus*

Their workman represented through the President, Palana Colliery Mazdoor Union, Bikaner.

## **APPEARANCES:**

*For employers.*—S/Sri Manohar Kothari, Legal Adviser and N. C. Bansal, Mines Manager.

*For workmen.*—Dr. Jawahar Lal Ajmani, Patron & an Officer.

INDUSTRY: Coal Mine.

DISTRICT: Bikaner (Rajasthan).

## AWARD

By Notification No. 5/35/63-LRII dated 19th September 1967, the Ministry of Labour, Employment & Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

*Matter of Dispute*

Whether the management of the Palana Colliery was justified in dismissing from service Shri Aidan, Register Clerk with effect from the 14th March, 1963. If not, to what relief is he entitled?

2. The Palana Colliery is owned and managed by the Government of Rajasthan. Sri Aidan was employed in this Colliery as a Register Clerk. It is necessary to give some historical background of the case of this worker. He is actively associated with the Union known as Palana Colliery Mazdoor Union. The services of Sri Aidan were terminated sometime in 1958 because of fraudulent representation that one Sri Bhana Ram was his father though actually he was his uncle and therefore obtained free medical facilities from the Medical Officer, Dr. B. L. Gupta, Incharge of Palana dispensary. In the explanation furnished by the opposite party dated 16th July 1958 he used insolent and objectionable language. This was also taken into account in terminating his services. Since there was an industrial dispute pending the management obtained approval of the action under Sec. 33(2)(b) I.D. Act from the Industrial Tribunal, Delhi, on 14th April, 1959. The Union raised an industrial dispute and a reference was made to the said Tribunal which was I.D. 205 of 1960. The same Presiding Officer by his award dated 21st April 1961 held that as he was acquitted by Criminal Court, he having been prosecuted for fraud and cheating and no proper enquiry was held, the termination of services of Sri Aidan was set aside and he was awarded three months' back wages. The insolent and objectionable language used in the explanation was not taken into account as the same was not the subject of the charge. After the publication of the award the Conciliation Officer seems to have pressed the management to reinstate Sri Aidan and the management ultimately by an order dated 26th June 1961 reinstated him. A copy of the reinstatement order and the award of the Industrial Tribunal as also a certified copy of the order of approval under Sec. 33(2)(b) I.D. Act were filed by the management as enclosures to the written arguments and from which the facts stated above have been extracted.

3. After Sri Aidan was reinstated in 1961, he seems to have worked for only a few months and then went home from where he had been sending applications on one ground or the other for leave. He was absent from 13th December 1961 till he reported on 12th February 1963. The various periods for which he was on leave and the reasons mentioned therein are stated in the charge-sheet dated 2/4th March, 1963 (Ex. E/27) in consequence of which he was dismissed and which would be reproduced at an appropriate stage. Suffice shall it be to state here that the management received leave applications Ex. E/1 to E/14, the last being supported by a Medical Certificate of a Vaidya Ex. E/15 and E/15. Meanwhile the management received communications from a rival Union, the Bikaner Division Trade Union Council, that Sri Aidan was not at all ill but had been elected as Panch in his village Panchayat, Nohar, and he will fully absented from duty on bogus grounds and certificates. The management got suspicious about it and by a communication dated 31st December 1962 directed Sri Aidan to appear before the Principal, Medical and Health Officer, Government of Rajasthan, Ganganagar on 10th January, 1963 (Ex. E/17). A copy of this was endorsed to the Medical Officer. Sri Aidan on receipt of this communication sent a letter dated 8th January 1963 (Ex. E/19) to the Manager, Palana Colliery, stating that he was unfit to under-take a journey to Ganganagar and appear for medical examination. The Manager thereupon by communication dated 30th January 1963 (Ex. E/20) directed that in case he was not fit to undertake journey, he should appear for medical examination on 10th February, 1963. Copy of this was endorsed to the Collector, Ganganagar, so as to ascertain the position about the Panchayat Samity and his attendance and also to Superintendent of Police, Ganganagar, requesting him to post a Sentry for watch at the house of Sri Aidan on 10th February, 1963. Having been cornered to this position Sri Aidan came to Palana and by means of an application dated 12th February 1963 (Ex. E/22) along with fitness certificate of the Vaidya (Ex. E/21) wanted to resume duty.



It may be mentioned that all previous leave applications and even this application to be permitted to resume duty was sent through Union to the management. The Mines Manager by letter dated 18th February 1963 (Ex. E/23) directed the Medical Officer to examine Sri Aidan who had been on leave for a year and a half (1½ year) and to issue a fitness certificate or otherwise. Sri Aidan did not appear and the Medical Officer reported about it on 21st February 1963 (Ex. E/25). The management on this, by communication dated 21st February 1963 (Ex. E/24) warned him that he should appear for medical examination before the Medical Officer. Sri Aidan protested against the order of the management for medical examination by communication dated 20th February 1963 (Ex. W/7) and again by letter dated 25th February 1963 (Ex. W/9). When Sri Aidan did not comply with the order for medical examination by the Colliery Doctor at Palana, the management charge-sheeted Sri Aidan by charge-sheet dated 2/4th March, 1963 (Ex. E/27-Ex. W/10). It would be material to reproduce the charge-sheet which runs as follows:—

#### Charge Sheet

"The following acts prejudicial to good conduct and subversive of discipline have been committed by you:—

(1) Except from 24th August 1962 to 14th September 1962 you have applied for leave continuously from 13th December 1961 in the following manner:—

Period		Reason
From 13-12-61	to 13-1-62	Urgent work
14-1-62	to 10-3-62	Urgent work
11-3-62	to 10-5-62	Death of uncle
11-5-62	to 22-6-62	Urgent work
23-6-62	to 23-7-62	Ill health
24-7-62	to 23-8-62	Ill health
15-9-62	to 15-10-62	Sickness of wife
16-10-62	to 15-11-62	Domestic work
16-11-62	to 30-11-62	Ill health
1-12-62	to date of recovery	Ill health

You were asked to appear before the Principal Medical & Health Officer, Ganganagar on 10th January 1963 for medical examination but you intimated that you were so seriously ill that could not move for the desired medical examination. Again you were required to appear before the P.M. H.O., Ganganagar on 10th February 1963 and if serious should inform the P.M. H.O. by 5th February 1963 who would arrange medical examination at your home.

You did not inform the P.M. H.O., Ganganagar about your condition and as per report received in this office you were also not at home on 10th February 1963. You have deliberately attempted towards evasion of medical examination required by this office. You have submitted a health certificate of Sanjivani Ausdhalaya signed by Shri Baru Ram Shastri on behalf of Vidya Datta Ram dated 9th February 1963 alongwith your application endorsed under No. PCMU/P394/63 dated 13th February 1963 by the Union.

The health certificate produced by you could not be accepted by this office and you were required to appear before the Medical Officer, Palana Dispensary, Palana for fitness certificate or otherwise. You refused to do it. Once again you were advised vide this office letter No. MMP/62-63/9282 dated 21st February 1963 to appear before the said medical authority to save yourself from wilful authorised absence and wilful disobedience.

You have not complied with and this is another attempt to evade your medical examination besides committing the act of unauthorised wilful absence and wilful disobedience.

You have also absented yourself from 24th August 1962 to 14th September 1962 without any leave application.

(2) There is a complaint that you were actually not sick and were in employment elsewhere which tantamounts that reasons for leave produced by you (with a few exceptions) were false.

(3) The rent-free Government accommodation provided to you for your residential purpose have been allowed to be occupied by another party without permission of this office which is misuse of the Government property and you have commissioned to that.

(4) The perusal of paragraphs 5 (kh) and (g) of your letter No. 1 dated 16th July 1958 addressed to this office is sufficient to lead that you are unfit to continue in service. This letter is full of insolence impertinence and defiance of authority. It also reaches the limit of personal vituperation. The manager is accused of being dishonest and being a traitor to Government and an offender. No management can put up such conduct on the part of the employee. The fact of being a member of the Union did not give you the right to indulge in highly objectionable remarks. You are, therefore, guilty of grave indiscipline, contempt of rule and disrespect of authority and general affronts to the management which amounts to gross-misconduct.

The aforesaid acts are prejudicial to good conduct subversive of discipline and amounts to gross misconduct under Clause 14(1), 14(2), 14(4), 14(7), 14(14), 14(16), 14(19) and 14(20) of the Standing Orders of the Colliery and would warrant your dismissal.

You are hereby required to show cause within 2 days of receipt of it as to why you should not be dismissed from service if you do not submit your explanation as asked for, the management will take the necessary action without any further reference to you on the presumption that you have no defence to offer against the charges of gross misconduct against you.

As the charges levelled against you are of grave and serious nature, you would have been suspended had you been on duty for four days."

Sri Aidan submitted explanations dated 5th March 1967 (Ex. W/11) challenging the right of the management to subject him to medical examination before allowing him to resume duty. For the period of absence from 24th August 1962 to 14th September 1962 it was contended that he had applied for leave and which had been sanctioned. For charges no. 2 and 3, there was simple denial. For Charge no. 4, it was stated that the charge itself is a proof of the *mala fides* of the management. The management by letter dated 6th March, 1963 (Ex. W/12) found the explanation unsatisfactory and appointed Sri G. N. Pancholi, Senior Overman, to hold an enquiry fixing 9th March 1963 as the date of enquiry. Sri Aidan at once protested against this appointment by letter (Ex. W/13) dated 6th March 1963. The objection was overruled by letter dated 8th March 1963 (Ex. W/14) and signed by Sri G. N. Pancholi as Acting Mines Manager himself. Sri Aidan again protested by another letter dated 8th March 1963 (Ex. W/15) and submitted his written statement dated 9th March 1963 (Ex. W/16). The Union also addressed a communication to the management dated 9th March 1963 (Ex. W/17) on the subject. The Mines Manager, Sri R. Bhadada by communication dated the 12th March 1963 referred to the letter of Sri Aidan dated 8th March 1963 and his written statement dated 9th March 1963 and overruled the objection against the appointment of the Enquiry Officer. Sri Aidan was advised to appear before the Enquiry Officer and participate in the enquiry on 14th March 1963 (Ex. W/8). Sri Aidan, however, again protested by letter dated 13th March, 1963 (Ex. W/19) and did not participate in enquiry. Sri Pancholi, therefore, conducted *ex parte* enquiry on 14th March 1963. No witnesses of the management were examined and by an examination of the documents which were before him, he recorded his findings on the same date (Ex. E/30) and the Mines Manager, Sri Bhadada, also passed an order of dismissal on the same date as endorsed on the back of the finding. The dismissal order was also communicated by a letter on the same date (Ex. E/31). The Union took up the dispute which in due course resulted in this reference.

4. After the parties filed their pleadings certain additional issues were framed in the case on 24th February, 1968. The issues which are reproduced below will show the points in controversy:—

#### Addl. Issues.

1. Whether Shri Aidan absented without proper leave?
2. Whether a proper domestic enquiry in accordance with Standing Orders and principles of natural justice was held?
3. Was he guilty of misconduct for which he had been dismissed?

**Findings:**

**Issue No. 1.**—As the charge-sheet would show the only disputed period for which the employers alleged that there was no leave application is the period 24-8-62 to 14-9-62. For the rest, the receipt of applications for different periods is not denied. The issue, therefore, is confined to the period in question, namely 24-8-62 to 14-9-1962. For all other periods it cannot be said that there was no application or any application had been rejected.

It appears that Sri Aidan must have submitted application for this period 14-8-62 to 14-9-1962 also, as he had been doing for all other periods before and after this period. It is significant to find that the management at no stage intimated to Sri Aidan that he had absented without any leave application for this period. As a matter of fact, when subsequent applications from 15-9-1962 were received, the management should have intimated and required the workman to explain about his absence without leave application for the period 24-8-62 to 14-9-1962. A Peon Book of the Union had been filed as Ex. W/2 which shows that a number of letters were sent to the Mines Manager, Palana Colliery, Palana, on 25-8-1962 and they were duly received. It is contended that the application of Sri Aidan for leave copy Ex. W/1 was also among the communications. From the circumstances of the case, therefore, it appears that there was an application for the period in question and Sri Aidan had not absented without a proper application.

**Issue No. 2.**—The first objection against the enquiry was contended to be that it was held by a Senior Overman, Sri B. N. Pancholi, who played as a tool in the hands of the Mines Manager. Sri Pancholi appears to be a senior man in the Colliery and as stated by him, officiates as Mines Manager in his absence. There could be no objection to his appointment as Enquiry Officer and the objection of Sri Aidan in this respect was clearly untenable. At the same time, the enquiry held by Sri Pancholi is far from a bonafide and a fair enquiry. It is vitiated on more than one grounds. In communication dated 6-3-1963 (Ex. W/12) the Manager intimated that in case the worker failed to attend the enquiry in person or failed to submit a written statement the enquiry would be conducted *ex parte*. Sri Pancholi himself while writing as Acting Mines Manager by letter dated 8-3-1963 (Ex. W/14) also warned the worker that in case he failed to attend in person or failed to submit a written statement along with papers it shall be deemed that he did not want to participate in the enquiry. Sri Aidan had filed a written statement in Hindi dated 5-3-1963 (Ex. W/11) and another one in English dated 9-3-1963 (Ex. W/16). Thus he had fulfilled one of the two conditions and the enquiry could not be concluded by the Enquiry Officer on this date. Sri Pancholi should have adjourned the enquiry to another date as Sri Aidan had filed two written statements. If the Enquiry Officer as required by Clause 15 of the Standing Orders had fixed a date for enquiry it is possible that the worker would have participated in the enquiry as by no communication he had intimated that he would not participate in the enquiry.

Over and above this, the finding of the Enquiry Officer is not based on evidence. No witness of the management was examined and in his finding he has not stated by which documents any particular part of the charge was proved. He admitted in his statement that he did not mention in his report which papers were filed by management. He stated that he had simply seen them and did not exactly remember what documents were originally produced before him. He tried to re-collect and pointed out a few documents but not all. In his enquiry report it is not stated by which documents or circumstances any particular fact was proved. As a matter of fact, it appears that he imported personal knowledge. After concluding the enquiry on the same date it is intriguing to find that the finding was also typed out on the same date. All this shows that the enquiry was not conducted fairly. The findings recorded by him are wholesale in respect of all the charges, for some of which evidently there was no evidence. It must, therefore, be held that no proper domestic enquiry in accordance with the Standing Orders and conforming to principles of natural justice was held.

**Issue No 3.**—There are four charges on the basis of which Sri Aidan had been dismissed. Charge No. 3 which relates to rent-free Government accommodation having been allowed for another purpose and to another party without permission is not proved by any evidence whatsoever and must therefore fail. Charge No. 4 also must fail because letter dated 15 July 1958 has not been produced before this Tribunal to show the objectionable language. Evidently this part of the charge has been raked up after Sri Aidan had been reinstated as a result of an award in his favour in case No. I. D. 205/1960 wherein it was held that the objectionable language cannot be considered in the matter of punishment as the same was not the subject of charge. This charge also fails not having been proved.

Charges No. 1 & 2, however, are material and parts of which are undoubtedly such which stand proved so as to justify the punishment. Sri Aidan right from 13th December 1961 till 12th February 1963 had been taking leave on one pretext or the other and which shows that there were no bonafide grounds or necessity. The management produced a report of Panchayat Adhikari, Panchayat Samity, Nohar (Ex. E/26) which was proved by evidence of Sri Bhagwan Das, Vikas Adhikari, who brought the relevant supporting documents. From that it would appear that Sri Aidan had attended numerous meetings of Panchayat Samity from December, 1961 to March, 1963. They are as follows:—

21-12-61	30-4-62	21-11-62
22-1-62	21-5-62	21-12-62
28-2-62	21-6-62	21-1-63
12-3-62	23-7-62	21-2-63
20-4-62	21-8-62	21-3-63
21-4-62	22-10-62	

Not only this, he presided meeting of Standing Committees social services & education on the following dates as mentioned in Ex. E/26.

15-12-61	22-8-62	7-12-62
30-12-61	22-9-62	22-12-62
30-1-62	22-10-62	22-1-63
6-7-62	1-11-62	

He also attended the Administration & financial standing committee meetings dated 20th December 1961 and 6th January 1962. Sri Aidan himself failed to come in evidence so as to explain the conduct. It is evident that he has been taking leave on false grounds and was really not ill when he applied for extension of leave from 16th November 1962 onwards. That was why he did not go for medical examination before the Principal Medical & Health Officer, Ganganagar and when cornered about it, he had to come and report for resumption of duty from 12th February 1963. So far so for charge No. 2 which stands proved in the context of the facts stated in charge No. 1. As for Charge No. 1 which is a narration of events, the main charge appears to be that he did not comply with the order to appear for medical examination before the Medical Officer Palana Dispensary, Palana as was required by the management. On behalf of Sri Aidan it is contended that there is no provision in the Standing Orders and he was not bound to submit to medical examination and furnish fitness certificate. Reliance is placed on an observation in a case of this very Colliery, Ref. No. I.D. 216 of 1961 decided by Sri P. D. Vyas, Central Government Industrial Tribunal, Delhi on 21-8-1962 and published at page 3060 and onwards of Gazette of India, Part II Sec. 3(11). The question arose whether the management could insist on production of fitness certificate before allowing resumption of duty. It was observed in paragraph 13 and 15 that since there was no provision in the Standing Orders, the management could not insist on production of fitness certificate. Each case is decided on the facts peculiar to that case. It is true that there is no provision in the Standing Orders one way or the other that on return from leave on health grounds a worker has or has not to produce the fitness certificate. But in every case a reasonable view will have to be taken. As an abstract proposition it may be correct that the management is not entitled to require a fitness certificate but when a worker has been on long leave on different grounds and had refused to appear before the Principal Medical & Health Officer, Ganganagar, for medical examination to support his illness and when the illness claimed was Dermatitis, the management was justified in requiring the worker to appear before the Colliery Doctor so as to find out the state of his health. It may not be so as to require him to produce a fitness certificate but to test his past assertions about illness and the disease mentioned by him. It was a reasonable order on the part of the management, disobedience of which justified the dismissal. Sri Aidan was not at all justified in disobeying the order of the management. He is, therefore, found guilty to have absented from duty on false and flimsy grounds and further to have disobeyed a reasonable order of the management. These are covered by Clause 14(1) wilful insubordination or disobedience of a lawful or reasonable order) as also under sub-clause (4) for habitual absence without sufficient cause.

#### Decision:

The result is that the management was justified in dismissing to Sri Aidan. He is not entitled to any relief. No order for costs.

Sd./- G. C. AGARWALA.  
Presiding Officer.  
2-7-1968.

[No. 5/35/63-LRII.]

## ORDERS

*New Delhi, the 9th July 1968*

**S.O. 2591.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Albion Colliery of Messrs Albion Colliery Company, Post Office Karmatand *Via* Mohuda, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

## SCHEDULE

Whether the management of Albion Colliery of Messrs Albion Colliery Company, Post Office Karmatand *Via* Mohuda, District Dhanbad was justified in stopping the following 42 workmen 'A' Seam Quarry, from work with effect from the 1st December, 1967?

Sl. No.	Name of the workmen	Designation
1.	Chulu Das	Quarry Pick Miner.
2.	Manbodh Sahu	Do.
3.	Pani Ram Rout	Do.
4.	Jiwan Rout	Do.
5.	Mohan Sahu	Do.
6.	Bhaiya Ram	Do.
7.	Jag Rakhan	Do.
8.	Nani Sahu	Do.
9.	Ishwar Gir	Do.
10.	Kariya Kewat	Do.
11.	Thukal Sahu	Do.
12.	Hulu Sahu	Do.
13.	Mathura Dusad	Do.
14.	Samru Das	Do.
15.	Ramcharan Satnami	Do.
16.	Paltan Gope	Do.
17.	Budhram Sahu	Do.
18.	Itwari Rajwar	Do.
19.	Kholbahar Dhoib	Do.
20.	Mekara Sahu	Do.
21.	Mekhan Sahu	Do.
22.	Man Rakhan	Do.
23.	Somaru Sahu	Loader.
24.	Sonai Bai	Do.
25.	Keja Bai	Do.
26.	Juga Bai	Do.
27.	Ganga Bai	Do.
28.	Basmati Bai	Do.
29.	Hira Bai	Do.
30.	Ghasnin Bai	Do.
31.	Bhajanmoti Bai	Do.
32.	Ram Kunwari Bai	Do.
33.	Radha Bai	Do.
34.	Raimati Bai	Do.
35.	Lalia Bai	Do.
36.	Krishna Bai	Do.
37.	Raj Kumari Bai	Do.
38.	Dukal Hin Bai	Do.
39.	Sipatia Bai	Do.
40.	Jambati Bai	Do.
41.	Khedia Bai	Do.
42.	Bari Hin Bai	Do.

If not, to what relief are the workmen entitled ?

[ No. 2/93/68-LRII. ]



*New Delhi, the 11th July 1968*

**S.O. 2592.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Katras Choitudih Colliery, Post Office Malkera, District Dhanbad of Messrs Burraker Coal Company Limited and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the management of Katras Choitudih Colliery, Post Office Malkera, District Dhanbad of Messrs Burraker Coal Company Limited of which Messrs Bird and Company (Private) Limited, Post Office Sijua, District Dhanbad, are the Managing Agents, was justified in refusing employment at the Katras Choitudih Colliery to the following workmen:—

1. Shri Musafir Sao.
2. Shri Bifan Pasi.
3. Shri Kedar Giri.
4. Shri Sampat Dubcy.
5. Shri Ramlakhan Dusadh.
6. Shri Kameshwar Dusadh.
7. Shri Jaipat Dusadh.
8. Shri Judagir Gope.
9. Shri Munshi Mahato.
10. Shri Ramdeo Sao.
11. Shri Badhan Bhuia.
12. Shri Bihari Dusadh.
13. Shri Zafaralli Mian.
14. Shri Puna Gope.
15. Shri Brahmdeo Gope.
16. Shri Amrit Dusadh.
17. Shri Manu Mochi.
18. Shri Ganouri Ramani.
19. Shri Saklu Mahato.
20. Shri Ramachandra Mochi.
21. Shri Sukhdeo Dhobi.
22. Shri Chhotan Giri.
23. Shri Karoo Dusadh.
24. Shri Lila Mahato.
25. Shri Sital Dhobi.
26. Shri Keshwar Mahato.
27. Shri Chhota Karoo Sao.
28. Shri Bali Telli.
29. Shri Bihari Ram.
30. Shri Bara Karu Sao.
31. Shri Bifan Bhuian.
32. Shri Musafir Mahato.
33. Shri Rampati Singh.
34. Shri Rampati Dusadh.
35. Shri Manik Chand Mahato.
36. Shri Srichand Mahato.
37. Shri Jodhan Mahato.
38. Shri Rampati Pasi.
39. Shri Pyare Lal Kewat.
40. Shri Mathura Mahato.
41. Shri Bachu Ram Mahato.
42. Shri Syambarlil Pasi.
43. Shri Deba Rajwar.
44. Shri Gorakh Mochi.
45. Shri Sagram Rajwar.
46. Shri Saligram Mahato.
47. Shri Jagdeo Dusadh.

48. Shri Sitaram Dusadh.
49. Shri Ramchandra Bhuian.
50. Shri Sagina Dusadh.
51. Shri Charitar Mahato.
52. Shri Bara Sheonandan Dusadh.
53. Shri Chhota Kameshwar Dusadh.
54. Shri Jalluddin.
55. Shri Jagdish Mahato.
56. Shri Ball Dusadh.
57. Shri Basant Ram.
58. Shri Jogesar Mahato.
59. Shri Chaneswar Dusadh.
60. Shri Deolal Mahato.
61. Shri Sita Saran Sao.
62. Shri Rampati Sao.
63. Shri Prabhu Dusadh.
64. Shri Gangu Bhuian.
65. Shri Karoo Bhuian.
66. Shri Raghunandan Bhuian.
67. Shri Kuleshwar Pasi.
68. Shri Ramdas Mochi.
69. Shri Ghooj Mahato.
70. Shri Mangar Mahato. No. III.
71. Shri Nageshwar Bhuian.
72. Shri Desai Bhuian.
73. Shri Dasrath Bhuian.
74. Shri Chhota Kunjan Bhuian.
75. Shri Bara Kunjan Bhuian.
76. Shri Teju Bhuian.
77. Shri Ch. Karoo Bhuian.
78. Shri Sanchar Bhuian.
79. Shri Baleshwar Bhuian.
80. Shri Etwari Bhuian.
81. Shri Bhagloo Bhuian.
82. Shri Rajdeo Bhuian.
83. Shri Deba Bhuian.
84. Shri Ganaouri Bhuian.
85. Shri Khelu Bhuian.
86. Shri Balo Bhuian.
87. Shri Nankeshwar Mochi.
88. Shri Sheo Narsin Sharma.
89. Shri Mangar Bhuian.
90. Shri Mahangoo Sao.
91. Shri Jugal Ramani.
92. Shri Rojan Ram.
93. Shri Gurucharan Dusadh.
94. Shri Dinanath Dusadh.
95. Shri Tribeni Mahato.
96. Shri Nijammuddin Mian.
97. Shri Dukhan Bhuian.
98. Shri Madhy Rajwar.
99. Shri Bara Munshi Mahato.
100. Shri Balgovind Mahato.
101. Shri Baleshwar Dusadh.
102. Shri Tanu Bhuian.
103. Shri Nathu Pasi.
104. Shri Bara Jagdish Dusadh.
105. Shri Ram Pyare Dusadh.
106. Shri Ramratan Mahato.
107. Shri Ram Pradip Mahato.
108. Shri Baleshwar Mahato.
109. Shri Sidhari Dusadh.
110. Shri Balgovind Dusadh.
111. Shri Lakhi Mahato.
112. Shri Bara Ramdeo Dusadh.
113. Shri Ramdhanl Bhuian.
114. Shri Charitar Dusadh.
115. Shri Babuchand Dusadh.
116. Shri Sohar Dusadh.
117. Shri Bandhu Bhuian.

118. Shri Dwarika Dusadh.
119. Shri Chhota Shyamlal.
120. Shri Bali Teli.
121. Shri Bhagan Bhulan.
122. Shri Raghu Bhuiyan.
123. Shri Shyamlal Bhuiyan.
124. Shri Madan Bhulan.
125. Shri Mangar Bhuiyan.
126. Shri Madho Bhuiyan.
127. Shri Karu Saw.
128. Shri Pradip Mahato.
129. Shri Sadhu Mahato.
130. Shri Mukhlal Dusadh.
131. Shri Bartu Bhuiyan.
132. Shri Gobardhan Rabidas.
133. Shri Karu Rabidas.
134. Shri Bara Faguni Bhuiyan.

If not, to what relief are these workmen entitled?

[No. 2/62/68-LRII.]

*New Delhi, the 15th July 1968*

**S.O.2593.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Rana Colliery of Messrs Lodna Coal Company (1920) Limited, Post Office Kalipahari, District Burdwan, and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under Section 7A of the said Act.

#### SCHEDULE

Whether the action of the management of Rana Colliery of Messrs Lodna Coal Company (1920) Limited, Post Office Kalipahari, District Burdwan, in treating Sarvashri T. P. Chatteraj and T. P. Prasad as Shale-Pickers instead of Assistant Loading Clerks is justified? If not, to what relief are they entitled and from what date?

[No. 6/43/68-LRII.]

**S.O. 2594.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Victoria West Colliery of Messrs Bengal Coal Company, Post Office Dishergarh, District Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the demand of the Colliery Mazdoor Congress (HMS), Asansol for payment of 150 per cent of the normal wages for work on Sunday to the Casual Wagon loaders of the Victoria West Colliery with effect from the 15th August, 1967 is justified?

2. If not, to what relief are the said casual wagon loaders entitled?

[No. 6/20/68-LRII.]

BALWANT SINGH, Under Secy.

**(Department of Labour and Employment)***New Delhi, the 15th July 1968*

**S.O. 2595.**—In exercise of the powers conferred by sub-section (2) of section 83 of the Mines Act, 1952 (35 of 1952) and in continuation of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation No. S.O. 291, dated the 9th January, 1968, the Central Government hereby authorises the Chief Inspector of Mines to exempt, for a further period upto the 31st December, 1968, any mine from the operation of clauses (3) and (37) of regulation 2 of the Metalliferous Mines Regulations, 1961, in so far as such clauses provide that an Assistant Manager or Underground Manager, as the case may be, should possess a Manager's Certificate, if the Chief Inspector is of opinion that the conditions in such mine are such as to render compliance with such provisions unnecessary or impracticable.

[No. 1/17/68-MI.]

**S.O. 2596.**—In exercise of the powers conferred by regulation 186 of the Metalliferous Mines Regulations, 1961, the Central Government hereby notifies the 1st of January, 1969, as the date on which the provisions of the said Regulations specified in column (1) of the Table below shall come into force in respect of the mines specified in the corresponding entry in column (2) of the said Table:—

TABLE

(1)	(2)
1. Regulation 32, the remaining provisions of regulations 34, 35, 37 and 38 which have not been brought into force so far and regulations 160(2), 176(2) and 185.	All the metalliferous mines to which the said Regulations apply.
2. Regulation 78(1).	All the metalliferous mines other than the gold mines

[No. 1/17/68-MI.]

J. D. TEWARI, Under Secy.

**(Department of Labour and Employment)****ORDERS***New Delhi, the 9th July 1968*

**S.O. 2597.**—Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the Calcutta Port Shramik Union, Calcutta have jointly applied to the Central Government for reference of an Industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas the Central Government is satisfied that the persons applying represent the majority of each party.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

**SCHEDULE**

Whether the demand of the Union that all the members of the crew should be paid overtime and not on individual basis if there is any work during recess hours and if overtime is given on individual basis then those of them who are not given overtime should be permitted to leave the vessel is justified? If so, what should be the relief?

[No. 28/50/68-LR-III.]

**S.O. 2598.**—Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the National Union of Water-front Workers, Calcutta have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matters set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas, the Central Government is satisfied that the persons applying represent the majority of each party.

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad constituted under section 7A of the said Act.

#### SCHEDULE

Whether the demand of the engine drivers of certain vessels for providing them relief to enable them to come out of the engine rooms during duty hours is justified? If so, what should be the relief?

[No. 28(47)/68-LR. III.]

**S.O. 2599.**—Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the Calcutta Port Shramik Union, Calcutta have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And, whereas the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the claim for promotion of Shri Batukeswar Banerjee, Tindal, Crane Vessel to the post of Crane Driver of Crane Vessel on and from the 21st March, 1964 was justified? If so, what should be the relief?

[No. 28/51/68-LR. III.]

*New Delhi, the 10th July 1968*

**S.O. 2600.**—Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the Calcutta Port Shramik Union, Calcutta have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

#### SCHEDULE

Whether the demand of the staff attached to the Commissioners' Hospitals for grant of turn of duty off during change-over from night shift to afternoon shift and also from afternoon shift to night shift, is justified? If so, what should be the relief.

[No. 28/53/68-LR. III.]



*New Delhi, the 11th July 1968*

**S.O. 2601.**—Whereas the Industrial Disputes specified in the Schedule hereto annexed are pending before the Presiding Officer, Industrial Tribunal, Kozhikode, constituted under section 7A of the Industrial Disputes Act, 1947;

And whereas for the ends of justice and convenience of parties, the said disputes should be disposed of without further delay;

Now, therefore, in exercise of the powers conferred by sub-section (I) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby withdraws the proceedings in relation to the said disputes from the Industrial Tribunal, Kozhikode, and transfers the same to the Industrial Tribunal, Bombay constituted under section 7A of the said Act and directs that the said Tribunal shall proceed with the disputes *de novo* and dispose of the same according to law.

#### SCHEDULE

Sl. No.	Parties to the dispute	No. and date of reference to the Industrial Tribunal.	S. O. No. of Gazette and year of publication.
1.	Cochin Dock Labour Board and their workmen.	28/101/67-LR. III dated the 18. March, 1963.	901/1968
2.	United Stevedores Association of Cochin (Private) Limited Cochin and 6 others.		
3.	Malabar Group of Shipping Companies comprising of (1) Malabar Steamship Company Limited, Cochin (2) M/s. New Dholera Steamships Ltd., Cochin (3) The National Steamship Company, Limited, Cochin (4) Messrs. New Dholera Shipping and Trading Company, Limited, Cochin.	28/86/65-LR. IV dated 1st March, 1968.	902/1968.
4.	Malabar Group of Shipping Companies comprising of (1) Malabar Steamship Company Limited, Cochin (2) M/s. New Dholera Steamships Limited, Cochin (3) The National Steamship Company, Limited, Cochin (4) Messrs. New Dholera Shipping and Trading Company, Limited, Cochin.		

[No. 28/101/67-LR.III.]

*New Delhi, the 15th July 1968*

**S.O. 2602.**—Whereas the employers in relation to the Calcutta Port Commissioners, Calcutta and their workmen represented by the Calcutta Port Shramik Union Calcutta have jointly applied to the Central Government for reference of an industrial dispute that exists between them to an Industrial Tribunal in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And, whereas the Central Government is satisfied that the persons applying represent the majority of each party;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

## SCHEDULE

Whether in the context of an assurance stated to have been given by the Port Administration to the Calcutta Port Shramik Union regarding service conditions of the crew of the Commissioners' Pilot Vessels "Sagar" and "Samudra", the Port Commissioners were justified in prescribing the following working hours for the above crew, namely:--

- (i) From 6 A.M. to 4 P.M. (with recesses from 9 A.M. to 10 A.M. and 1 P.M. to 2 P.M.) on week days.
- (ii) From 6 A.M. to 1 P.M. (with recess from 9 A.M. to 10 A.M.) on Saturdays.
- (iii) From 6 A.M. to 9 A.M. on Sundays.

If not, what relief should be provided?

[No. 28(52)/68-LR-III.]

**S.O. 2603.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Messrs M. L. Banerjee and Sons, Calcutta and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad constituted under section 7A of the said Act.

## SCHEDULE

Whether the following demands of the Table staff employed by Messrs M. L. Banerjee and Sons, Calcutta are justified? If so, at what rate and in what manner?

- (1) Grant of pay scale of Rs. 350—15—425—20—625.
- (2) Dearness Allowance on the basis of cost of living index.
- (3) Provident Fund.
- (4) Sick Leave and Casual leave.
- (5) Conveyance allowance.
- (6) Medical benefit/allowance.
- (7) Overtime allowance.
- (8) Age of Superannuation; and
- (9) Gratuity.

[No. 28(35)/68-LR-III.]

C. RAMDAS, Under Secy.

[Office of the Chief Labour Commissioner (Central)]

## ORDER

New Delhi, the 4th July 1968

**S.O. 2604.**—Whereas an application has been made under Section 19 (b) of the Payment of Bonus Act 1965 by M/s. Dharti Dhan (P) Ltd., in relation to their establishments mentioned in the schedule below for extension of the period for the payment of bonus to their employees for the accounting year ending on 30th June 1967;

And whereas being satisfied that there are sufficient reasons to extend the time I have in exercise of the powers conferred on me by the proviso to clause (b) of section 19 of the said Act read with the notification of the Government of India in the Ministry of Labour & Employment No. WB-20(42)/65, dated the 28th August, 1965 passed orders extending the period for payment by the said employer by 3 months from the last date for payment of bonus under clause (b) of section 19 of the Act;

Now, this is published for information of the employees of the said establishments.

## THE SCHEDULE

Name and address of the employer.	Establishment(s)
M/s. Dharti Dhan (P) Ltd. Udaipur.	Deopura, Padla and Kundoli Soap Stone Mines in Udaipur Division.

[No. BA.6(58)/67-L.S.L.]

O. VENKATACHALAM,  
Chief Labour Commissioner (Central).

## (Department of Rehabilitation)

## (Office of the Chief Settlement Commissioner)

New Delhi, the 8th July 1968

S.O. 2605.—In exercise of the powers conferred by Clause (a) of Sub-section (2) of Section 16 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints for the State of Rajasthan, Shri O. P. Narula, Accounts Officer (Junior) in the office of the Assistant Settlement Commissioner Incharge, Jaipur, as Managing Officer for the custody, management and disposal of compensation pool with effect from 1st July, 1968.

[No. 4(4)AGL/68.]

A. G. VASWANI,  
Settlement Commissioner (A) & Ex-Officio Under Secy.

## (Department of Labour and Employment)

New Delhi, the 15th July 1968

S.O. 2606.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Presiding Officer, Central Government Industrial Tribunal (No. 2), Dhanbad in the matter of an application under section 33A of the said Act, from Shri Baidya Nath Chatterjee, Senior Mechanic, represented by Shri R. K. Nair, General Secretary, National Mineral Development Corporation Mines Workers' Union, Kiriburu (Singbhum), which was received by the Central Government on the 24th June, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT  
DHANBAD

## PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

In the matter of a complaint under Section 33A of the Industrial Disputes Act, 1947 (XIV of 47) in the matter of reference No. 245 of 1967.

COMPLAINT No. 6 OF 1967

## PARTIES:

Shri Baidya Nath Chatterjee, Senior Mechanic, C/o. N. M. D. C. Mines  
Workers Union.—Complainant.

Versus

Kiriburu Iron Ore Mines, N.M.D.C. Limited.—Opposite Party.

## APPEARANCES:

On behalf of the complainant.—None.

On behalf of the Opposite Party.—None.

STATE: Bihar.

INDUSTRY: Iron ore Mines.

Dhanbad, 17th June, 1968/27th Jyaishta, 1890 (Saka)

## AWARD

This is a complaint filed under Section 33A of the Industrial Disputes Act, 1947 by Shri Baidya Nath Chatterjee, complaining that the opposite party has contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 in terminating his service as a Senior Mechanic. Today an application is received signed by Shri D. R. Bharadwaj, General Manager, of the opposite party and Shri R. K. Nair, General Secretary, NMDC Mines Workers' Union, Kiriburu (Singhbhum), stating that they have settled the matter involved in the complaint to their mutual satisfaction and that award may be made in terms of the compromise. Under Section 36 of the Industrial Disputes Act, 1947 the complainant could authorise Shri R. K. Nair, General Secretary, NMDC Mines Workers' Union and he has in fact has given the authorisation letter also. The authorisation is accepted by Shri R. K. Nair. The compromise consists of only one term, *viz.*, that the management agree to reinstate the applicant with retrospective effect in his former post. I consider the compromise is for the benefit for the complainant. The compromise is, therefore, accepted. The award is made in terms of the compromise and submitted under Section 15 of the Industrial Disputes Act, 1947. The compromise memo is annexed herewith and made part of the Award.

(Sd.) N. VENKATA RAO.

Presiding Officer,

Central Government Industrial Tribunal,

(No. 2) Dhanbad.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT AT DHANBAD

In the matter of a complaint under Section 33 A of the Industrial Disputes Act, 1947 (XIV of 47) (in the matter of Reference No. 245 of 1967).

COMPLAINT No. 6 OF 1967/388

Dated 21st May, 1968

## PARTIES:

Baidya Nath Chatterjee, Senior Mechanic, Kiriburu Iron Ore Mines, C/o NMDC Mines Workers' Union, P.O. Kiriburu (Singhbhum)—Complainant.

Versus

Kiriburu Iron Ore Mines, NMDC Ltd., P.O. Kiriburu (Singhbhum)—Opposite Party.

## APPEARANCE:

On behalf of the Complainant—Shri R. K. Nair, General Secretary, NMDC Mines Workers' Union, P.O. Kiriburu (Singhbhum).

On behalf of the Management—Shri D. R. Bharadwaj, General Manager, Kiriburu Iron Ore Mines, NMDC Limited, P.O. Kiriburu (Singhbhum).

INDUSTRY: Iron Ore.

STATE: Bihar, Place: Kiriburu.

Dated, 8th June, 1968

(1) That both the parties have arrived at to mutual settlement on this day of 8th June, 1968 in the matter of Complaint No. 6/67/388 dated 21st May, 1968, arising out of reference No. 245 of 1967, the terms of which are as follows:—

(2) That the management agree to reinstate Shri Baidya Nath Chatterjee Senior Mechanic with retrospective effect in his former post.

(3) That both the parties pray that the Tribunal may kindly accept this mutual settlement and an award be given accordingly.

*On behalf of the workmen concerned.*

(Sd.) R. K. NAIR,

General Secretary,  
NMDC Mines Workers' Union,  
Kiriburu (Singhbhum).

*Dated the 8th day of June, 1968.*

*On behalf of the management.*

(Sd.) D. R. BHARADWAJ,

General Manager,  
Kiriburu Iron Ore Mine NMDC Ltd.,  
Kiriburu (Singhbhum).

#### APPENDIX I

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

#### COMPLAINT NO. 6 OF 1967.

Baidya Nath Chatterjee, Sr. Mechanic

*Complainant.*

*Vs.*

Kiriburu Iron Ore Mines, N.M.D.C. Limited.

*Opp. party.*

#### *List of Document admitted in Evidence for Complainant.*

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted by consent or on proof	Proved by	Remarks
1	2	3	4	5	6
NIL	NIL	NIL	NIL	NIL	NIL

#### *List of Document admitted in Evidence for Opp. Party.*

Distinguishing mark or number	Description of document and date	Date of admission	Whether admitted by consent or on proof	Proved by	Remarks
1	2	3	4	5	6
NIL	NIL	NIL	NIL	NIL	NIL

Sd/- N. VENKATA RAO,

Presiding Officer

Central Govt. Industrial Tribunal No. 2, Dhanbad.

#### APPENDIX II

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD.

#### COMPLAINT NO. 6 OF 1967.

Baidya Nath Chatterjee, Sr. Mechanic

*Complainant*

*Vs.*

Kiriburu Iron Ore Mines, N.M.D.C. Limited.

*Opp. party.*

#### *List of Witness Examined for the Complainant.*

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL



*List of Witness Examined for the Opp. Party.*

No. of witness	Name of witness	Date of examination
NIL	NIL	NIL

Sd/- N. VENKATA RAO,  
Presiding Officer  
Central Government Industrial Tribunal No. 2, Dhanbad.

[No. 24/26/68-LRI.]

O. P. TALWAR, Under Secy.

